The American Corporation

An Institutional History, c. 1150 – 2026

Patterns of Power

Thomas J. Bryan with Claude (Anthropic)

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What This Study Tracks

This is a single historical case study, told in five parts, of the modern corporation — its origins, its progressive elaboration, its consolidation into the dominant form of economic organization in the modern world, and its contemporary operation. The study takes the American corporation as its principal focus, but it begins where the institution itself begins, in the medieval and early modern European antecedents from which the modern form emerged, and tracks the institution across nearly a thousand years. The study belongs to the *Patterns of Power* project, which tracks recurring mechanisms of elite power across civilizations through sustained historical work on specific institutions and operations. The corporation is, in this project's view, one of the most consequential institutional inventions in modern history, and the case study treats it at the resolution that judgment requires.

The study tracks five movements across approximately nine hundred years. **Part I** addresses the medieval origins and the chartered companies from roughly 1150 to 1700. It establishes the legal and institutional materials from which the modern corporation emerged — the medieval ecclesiastical corporation, the municipal corporation, the guild, and the early chartered trading companies through which the institutional form was progressively extended into commerce. It follows the foundational figures and the establishment of the Dutch and English East India Companies as the institutional templates from which the later corporation would develop, and it addresses the operations the trading companies conducted, which were not separable from the institutional form they exercised.

Part II follows the Bubble, the Retreat, and the American Multiplication from 1700 to 1819. It addresses the South Sea and Mississippi bubbles of 1720, the legislative responses that constrained

the corporate form across Britain for the following century, and the transfer of the institutional form to the American context, where the constraints did not hold. The part tracks the multiplication of state corporate charters across the post-Revolutionary American period and the establishment of the *Dartmouth College* doctrine in 1819, which placed the corporate charter under constitutional protection.

Part III addresses the industrial transformation from 1819 to approximately 1914. It follows the corporate form's expansion across the American economy — the railroad consolidation, the trust movement, the establishment of the holding company and the general-incorporation statutes that displaced the older charter-granting practice, the *Santa Clara* matter of 1886 and the longer development of corporate personhood, and the institutional consolidation that produced the modern industrial corporation by the early twentieth century.

Part IV examines the managerial corporation and the postwar accord from approximately 1914 to approximately 1980. It addresses the rise of the salaried managerial class, the Berle and Means analysis of 1932 that named the separation of ownership from control, the New Deal regulatory framework that constrained the corporation across the middle decades of the twentieth century, the postwar industrial settlement that produced the historically unusual accord between corporation, labor, and the regulatory state, and the institutional form the accord produced.

Part V addresses the shareholder-value transformation and the contemporary form from approximately 1980 to 2026. It tracks the doctrinal shift — the Jensen-Meckling framework, the Friedman doctrine, the academic and political-economic developments that produced the reorientation of the corporation toward shareholder return — and the institutional changes that followed: the leveraged buyout era,

the financialization of the non-financial corporation, the executive compensation transformation, the offshoring and supply-chain restructuring, and the contemporary form the transformation has produced. The part closes with a treatment of the institutional residue and what the case has supplied as a pattern.

The recommended reading order is sequential, Part I through Part V. The corporation is an unusually long-running institution, and the contemporary form is unintelligible without the institutional history that produced it. The medieval and early modern parts are not background; they are the foundation on which the rest stands.

A note on register, consistent with the discipline of the project. The corporation is a contested subject across the contemporary political spectrum, and the study refuses both the prosecutorial and the apologetic registers that are the available defaults. The corporation has produced extraordinary institutional accomplishments — the coordination of large-scale economic activity, the mobilization of capital at unprecedented scale, the technical and organizational innovations that have transformed material life. The corporation has also produced documented pathologies — labor extraction, environmental degradation, political capture, the systematic externalization of costs onto populations the institution has had limited incentive to consider. Both registers belong in the historical record. The study places them in the record together. The reader judges.

A final note on authorship and method. The pattern recognition is the work of one mind tracking historical patterns; the research, organization, and historical prose are the work of another, an artificial one. The combination is the method. Bibliography is given in full at the end of Part V.

— The authors, 2026

Part I — Medieval Origins and the Chartered Companies, c. 1150 – c. 1700

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The modern American corporation possesses a specific set of operational features that the medieval institutions from which it descends did not possess and that the early modern institutions through which it developed possessed in only partial form. The contemporary corporation operates with perpetual existence, limited liability for shareholders, separate legal personality, freely transferable shares, central management distinct from ownership, the legal capacity to hold property and conduct litigation in its own name, the standing of personhood under American constitutional law, the recognized right to engage in political speech through campaign expenditure, and the broader range of operational and constitutional features that the form has accumulated across approximately one thousand years of institutional development. Each of these features was added at a specific historical moment, by specific persons facing specific problems, using the institutional and conceptual materials they found at hand. None of those persons was designing the modern corporation. Each was solving the question in front of them. The doctrines they composed and the institutions they founded were inherited by subsequent generations who reached for what the prior generation had left behind and adapted it to the problems of their own moment. The cumulative product, by 2026, is the institutional form this case study tracks.

Part I traces the form's medieval and early modern foundation. The opening section recovers the canon-law origin of the corporation as a

legal person — the doctrine of *persona ficta* that Pope Innocent IV consolidated in the middle of the thirteenth century to resolve a property-holding problem the church's monasteries had faced for generations. The second section follows the canon-law inheritance into the English common-law tradition, where Edward Coke in 1612 produced the doctrinal articulation that subsequent English and American corporate-law jurisprudence would carry forward. The third section turns to the chartered trading companies of the late sixteenth and early seventeenth centuries — the Muscovy Company of 1555, the Levant Company of 1581, and centrally the East India Company chartered by Elizabeth in December 1600 — through which the corporate form was first applied at scale to long-distance commerce. The fourth section examines the Dutch Verenigde Oost-Indische Compagnie of 1602, whose structural innovations supplied the operational template for what the modern corporation would shortly become. The fifth section tracks the form's extension across the seventeenth century to colonial settlement, banking, and the slave trade — Virginia, Massachusetts Bay, Hudson's Bay, the Royal African Company, the Bank of England. The closing section registers the operational situation of the chartered-corporation form at the turn of the eighteenth century and points toward the institutional crisis of 1720 that Part II will handle.

The institutional accomplishments of the form across this period were considerable. The chartered companies built the operational infrastructure of long-distance European commerce, supplied the financing and personnel of the early European colonial settlements, and produced the institutional vehicles through which the Atlantic and Indian Ocean economies were integrated across the seventeenth century. The institutional pathologies were equally considerable. The same form, applied to the same purposes by the same persons,

conducted the Atlantic slave trade, presided over the Banda Islands massacre of 1621 and the Bengal famine of 1769–1773, administered indigenous depopulations across the colonial Americas, and produced the operational record that contemporary critics from Defoe to Burke would shortly begin to register. Both are present in the historical record. The case registers both.

One — The Canon-Law Foundation

The medieval church faced a structural problem the institutional life of the religious houses produced inescapably. Monks and friars had taken vows of individual poverty. The vows were not merely personal disciplines; the canon law treated entry into religious life as a kind of legal death, after which the individual's worldly capacities — to own property, to enter contracts, to receive bequests — lapsed. But the monasteries those individuals collectively constituted needed land, buildings, books, plate, mills, vineyards, and the broader range of temporal infrastructure that sustained the religious life across generations. The monastery as an institutional reality required ownership. The monks as individual religious persons could not be the owners. The same problem extended beyond the cloistered communities to cathedral chapters, episcopal sees, and the wider range of ecclesiastical entities whose temporal existence had to be sustained across the deaths and replacements of individual clerics. The institution's continuity demanded something the natural persons composing it could not supply.

The canon lawyers worked at the problem across the twelfth and thirteenth centuries with the conceptual materials available to them. The Roman law had supplied the underlying tradition — the *universitas* of Roman municipal corporations, the *collegia* and *sodalitates* of Roman

religious and professional associations, the formal Roman-law distinction between an entity composed of members and the individual members themselves. The glossators on Gratian's *Decretum* (the mid-twelfth-century compilation of canonical authorities that consolidated canon law into a teachable corpus) and on the subsequent papal decretals had treated collective ecclesiastical entities — *universitas*, *collegium*, *corpus* — as units capable of legal action since the late twelfth century. The pattern of treatment was inherited, adapted, and extended across successive generations of canon-law commentary at Bologna, Paris, and the other centers where canon law was taught.

The figure who consolidated the medieval doctrine was Sinibaldo Fieschi, born into the Ligurian merchant nobility around 1195. His family, the Fieschi of Lavagna near Genoa, were a rising house with connections in both the commercial and ecclesiastical realms. Sinibaldo studied first at Parma under the supervision of his uncle Obizo, the bishop, and then proceeded to Bologna, the principal center of canon-law instruction in the medieval West. By 1223 he was a *magister* and a papal subdeacon. He served as auditor in the Roman curia from 1226, was created Cardinal-Priest of San Lorenzo in Lucina in September 1227, served as Vice-Chancellor of the Roman church, became Bishop of Albenga in 1235, and was elected to the papacy on June 25, 1243, taking the name Innocent IV. He was, by the time of his elevation, widely considered the foremost canonist of his generation. His pontificate was dominated by the long conflict with the Hohenstaufen emperor Frederick II — the First Council of Lyons in 1245 was convoked principally to address that conflict — but Innocent's canonical work continued throughout his reign, and the *Apparatus in quinque libros decretalium*, his commentary on the papal decretals, was the major work of his juridical career.

In the *Apparatus*, composed during the papacy and published shortly after the Council of Lyons, Innocent IV formulated the doctrine of the corporation as *persona ficta* — fictional person. The corporation was a person for legal purposes, capable of holding property and conducting suits in its own name, but the personhood was fictive, sustained by the law's recognition rather than by natural reality. The doctrine resolved the property-holding problem the monasteries had faced. The monastery could own its lands while the monks who composed it remained individually poor. The doctrine also resolved a series of subsidiary problems the canon lawyers had been working at: how a chapter could continue across the deaths of individual canons, how the *universitas* of a cathedral could conduct its temporal affairs, how the broader range of ecclesiastical entities could maintain institutional continuity beyond the lifetimes of the natural persons who composed them.

A second feature of the doctrine deserves operational attention because it points to a structural duality that every successful corporate device exhibits. The fictional person, Innocent reasoned, had no soul. It could not be excommunicated. The reasoning resolved a real spiritual difficulty — the question whether the church could excommunicate one of its own constituent corporations, and what the spiritual status of such excommunication would mean — but it also supplied collective ecclesiastical entities with a defensive feature their individual members did not possess. The corporation could not be the subject of the spiritual sanctions that natural persons risked. It could not commit treason. It could not be outlawed. It acted through agents, not in person, and so it could not be required to perform fealty or to swear oaths. The corporate device, in other words, combined institutional capacity with institutional shelter. The combination would prove durable across centuries of subsequent adaptation. The corporation gained what its individual members could not collectively achieve while at the same

time gaining protection from consequences that would have attached to those members performing the same operations. That duality is built into the form from the canon-law beginning.

Innocent IV was not designing the modern corporation. He was solving the property-holding problem of the medieval church's collective bodies using the conceptual materials that several generations of canon-law commentary had produced. The doctrine he consolidated would be carried forward in canon-law treatises and taught in the canon-law faculties of Bologna, Paris, Oxford, and Cambridge for the following four centuries. The conceptual materials would be available when later lawyers, facing other problems in other settings, reached for what canon law had worked out. They would be available in the early modern English common-law tradition when the question of the wealthy commoner's bequest to a charitable corporation produced the *Case of Sutton's Hospital*. They would be available when the late Tudor crown turned to the chartered-corporation form for the long-distance trades. They would be available again when American courts confronted the question of the corporate charter's constitutional standing in the early nineteenth century. The doctrine took its initial articulation from a thirteenth-century pope solving a thirteenth-century problem. It accumulated subsequent uses across the centuries that followed.

Two — The English Common-Law Inheritance

The canon-law materials passed into the secular and commercial life of late medieval and early modern England through the legal-educational pathways the medieval church had built. The institutional problem the English faced was not specifically ecclesiastical. It was the broader question of how collective entities — towns, guilds, livery companies, schools, hospitals, the City of London itself — could hold property, conduct their internal affairs, and continue their existence across the deaths of their individual members. The materials available for solving the problem included the canon-law tradition the church's lawyers had carried through the medieval universities, the Roman-law inheritance the same scholars had transmitted alongside the canon law, and the practical English experience of communities of various kinds operating across the late medieval centuries under royal charters that recognized their collective capacities.

The chartered boroughs were the oldest form. From the twelfth century forward, English towns received royal charters that recognized their collective capacity to hold property, conduct their own courts, govern their internal affairs, and continue across the deaths of individual burgesses. The City of London — whose privileges Henry I's charter of approximately 1130 had recognized and which Magna Carta in 1215 had confirmed — operated through the Court of Common Council and the Lord Mayor's office, holding property and exercising jurisdiction under chartered authority that ran back to the eleventh century or before. The merchant and craft guilds of the late medieval period operated through internal regulations, collective property, and the apprenticeship structures that reproduced their membership across generations. The London livery companies — the Mercers (chartered 1394), the Grocers (1428), the Drapers, the Fishmongers, the

Goldsmiths, the broader range of trades — emerged across the fourteenth and fifteenth centuries as chartered bodies with collective property, regulatory authority over their trades, and continuous existence beyond the lifetimes of individual liverymen. The Oxford and Cambridge colleges, the cathedral schools, the medieval hospitals — Saint Bartholomew's in London, Saint Thomas's, the broader range of medieval charitable foundations — operated through similar chartered structures, holding endowments across the deaths of individual masters and fellows.

The English common-law tradition that emerged across the late medieval and early modern centuries absorbed and articulated the canon-law materials within the conventions of English jurisprudence. Edward Coke consolidated the doctrine through his *Reports* and through his subsequent *Institutes of the Laws of England*. Coke had been Solicitor-General under Elizabeth, Attorney-General from 1594, and Chief Justice of the Common Pleas from 1606. The *Reports*, published in eleven parts across Coke's lifetime and one posthumous twelfth part, supplied the principal modern statement of English common-law doctrine across the range of subjects English law had developed since the medieval period. Coke was not building from nothing. He was systematizing what English law had already worked out across several centuries — the canon-law inheritance, the practical chartered-borough and livery-company experience, the medieval and Tudor decisions on guild and corporate matters — and supplying the doctrinal articulation that subsequent English and American jurisprudence would inherit.

The *Case of Sutton's Hospital*, reported in the tenth part of the *Reports* (10 Co. Rep. 23a; 77 Eng. Rep. 960), supplies the doctrinal articulation that every subsequent corporate-law jurist in the

Anglo-American tradition would carry. The case arose from a wealthy commoner's bequest and from his disinherited heirs' attempt to defeat it, and its facts deserve specification because they illustrate at close quarters how the doctrine was produced through a particular dispute over a particular fortune.

Thomas Sutton was born in 1532 in Lincolnshire, the son of a steward of the Sheriff's courts. Educated at Eton and (probably) at Cambridge, he entered the service of the crown and rose to hold the post of Master of the Ordnance for the Northern Parts — a major position responsible for the military supplies and fortifications of the English north — from 1569 to 1583. In 1578 he acquired the lease of the manors of Gateshead and Whickham, on the south bank of the Tyne opposite Newcastle, from the dissolved bishopric of Durham. The lease included the underlying coal seams. Across the next five years Sutton developed the coal extraction and exported the coal southward by sea. He sold the lease in 1583, returning to the south with the profits. He married, in September 1582, Elizabeth Dudley, the widow of John Dudley of Stoke Newington and the daughter of William Gardiner, a connection that more than doubled his rental income. He devoted the subsequent decades to money-lending, then a recently legalized practice (interest at not more than ten percent had been authorized by the Usury Act of 1571). His accounts at his death recorded personal wealth of over fifty thousand pounds in outstanding obligations and recognizances, together with an annual rental income of approximately £4,836. His contemporaries called him "Croesus" and "Riche Sutton." He was widely accounted the wealthiest commoner in England.

Sutton had no legitimate children. An illegitimate son, Roger, born to Agnes Inskipp during Sutton's years in the north, was excluded from the will. Sutton determined to devote his fortune to a charitable

foundation — an almshouse for eighty impoverished old gentlemen ("either decrepit or old captaynes either at sea or at land, maimed or disabled soldiers, merchants fallen on hard times, those ruined by shipwreck or other calamity") combined with a free grammar school for forty boys. He had originally planned to locate the foundation at Hallingbury Bouchers in Essex, and an act of Parliament in 1610 had authorized that establishment. In May 1611 he changed course and purchased the Charterhouse in London — the dissolved Carthusian monastery whose lay buildings had passed through several noble owners since the dissolution — from Thomas Howard, Earl of Suffolk, for £13,000. James I granted letters patent on June 22, 1611, authorizing the establishment of "the Hospital of King James founded in the Charterhouse in the County of Middlesex." Sutton executed the deed of endowment on October 31, 1611. He died at his house in Homerton on December 12, 1611, six weeks later.

The will was immediately contested. The size of the bequest — contemporary correspondence put it at approximately £200,000, an enormous sum — produced what the diplomat Sir John Bennet, writing to Dudley Carleton on June 8, 1612, called "much talk about rich Sutton's bequest of 200,000l. for charitable uses, which is so great that the lawyers are trying their wits to find some flaw in the conveyance." The principal challenger was Simon Baxter, Sutton's nephew, who argued through counsel that the corporation Sutton had founded was a "mathematical or Utopian" entity — an abstraction with no real existence — and therefore could not be the subject of a transfer of property. The estate, on Baxter's theory, reverted to him as the natural heir. James I himself intervened in the matter, writing a sharp letter to the executors questioning the will's provisions and pressing for an allowance to be made to Roger Sutton, the illegitimate son.

The case was argued before the assembled judges of the King's Bench, the Common Pleas, and the Exchequer in the Exchequer Chamber. In June 1613, by a vote of ten judges to one, the court upheld the corporation. Coke, who had been elevated from Chief Justice of the Common Pleas to Chief Justice of the King's Bench in 1613 (in a move that was nominally a promotion but was understood at court to remove him from the more powerful Common Pleas bench), wrote the report of the case for inclusion in the tenth part of his *Reports*. The reasoning supplied the foundational English common-law statement of corporate personality, and the language has been quoted in subsequent corporate-law jurisprudence across four centuries.

A corporation aggregate of many, Coke wrote, "is invisible, immortal, and resteth only in intendment and consideration of the Law; and therefore in 39 H. 6. 13b. 14 a. Dean and Chapter cannot have predecessor nor successor. They may not commit treason, nor be outlawed, nor excommunicate, for they have no souls, neither can they appear in person, but by Attorney." The corporation, on Coke's articulation, possessed a determinate set of features that distinguished it from the natural person: invisibility, immortality, existence in legal contemplation rather than physical reality, action through agents rather than in person, freedom from the spiritual sanctions that attached to souls, and the broader range of capacities and incapacities that a fictional legal personality entailed. The features were drawn from the canon-law tradition — every one of Coke's specifications can be traced to the thirteenth-century canonists and their successors — and reformulated within the diction of English jurisprudence.

The doctrine the *Sutton's Hospital* report formalized was inherited by the eighteenth-century English common-law tradition through William Blackstone, who quoted Coke at length in the first book of his

Commentaries on the Laws of England (1765–1769). Blackstone's *Commentaries* in turn supplied the foundational legal text for American legal education across the late eighteenth and early nineteenth centuries — every American lawyer of the founding generation read Blackstone, and the colonial-era and early-republican law libraries were built principally around the *Commentaries* and around Coke's *Institutes*. When John Marshall in 1819 came to decide *Dartmouth College v. Woodward*, the leading English authority on corporate personality he and the parties' counsel relied on was *Sutton's Hospital*. The doctrinal chain ran from Innocent IV's *Apparatus* in the 1240s through Coke's *Reports* in 1612 through Blackstone's *Commentaries* in 1765–1769 through Marshall's opinion in 1819 to the subsequent American corporate-law jurisprudence the present case will track in later parts.

Coke was not designing the modern corporation. He was deciding a specific dispute over a specific bequest — could the wealthiest commoner in England, having determined to leave his fortune to a chartered hospital and grammar school, be defeated by a disinherited nephew? — using the doctrinal materials available. The doctrine he formalized acquired institutional life beyond what the *Sutton's Hospital* case alone could have given it. The conceptual residue accumulated. The materials available to subsequent lawyers and judges, when they faced their own problems, would include what Coke had set down in the tenth part of the *Reports*.

Three — The Chartering Crown and the Trading Companies

The late Tudor crown faced a structural problem that the geography of the early modern world economy was producing. The Atlantic and Indian Ocean trades were generating extraordinary returns for Spanish and Portuguese merchants. The fall of the Portuguese throne to Philip II of Spain in 1580 had given the Habsburg combination of crowns nominal command of the southern routes to the Indies and the Americas. The English wanted into the trades, both for the commercial returns and for the strategic counter-weight a competing trading position would supply. The crown lacked the revenue to underwrite long-distance voyages directly. Private merchants had capital available to fund individual voyages but not the capital required for the much larger and longer-term ventures that operating across the Atlantic and reaching India would demand. The institutional combination needed was crown authority granting monopoly rights to protect merchant returns against domestic competition and merchant capital underwriting the operational costs that the crown could not bear. The vehicle that emerged from the combination was the chartered trading company. The form had been built originally for medieval ecclesiastical, municipal, and craft purposes. The same form, with relatively modest adaptation, could be applied to the long-distance commercial purposes the late Tudor situation required.

The Muscovy Company was the first major English example. The Company received its charter from Mary I and Philip II in 1555 — a name and date that mark how recent the Spanish-English combined sovereignty appears in the chartering record. Sebastian Cabot, the elderly Venetian-English navigator who had been instrumental in promoting English northern voyages since the 1530s, served as the

Company's first governor. The charter granted exclusive English rights to trade with Russia and a corporate organizational structure modeled on the existing livery-company precedents — a governor, a court of assistants, freemen of the company who subscribed to voyages, and a corporate seal. Investors pooled capital, the Company conducted the voyages, the returns were distributed to the investors according to their subscriptions. The structural form was an extension of the established chartered-corporation tradition applied to long-distance trade.

The Spanish Company followed in 1577 for trade with Spain. The Levant Company (also called the Turkey Company) received its initial charter from Elizabeth in 1581 for trade with the Ottoman empire and the eastern Mediterranean. The Africa Company of 1588 — formed in the wake of the Armada — extended the pattern to the western African coast. The Cathay Company (1577), the Eastland Company (1579), and the various smaller chartered ventures of the late Elizabethan period repeated the same form across other trade routes. By the end of Elizabeth's reign the chartered-trading-company structure was the standard institutional vehicle through which English long-distance commerce was organized.

The East India Company, chartered on the last day of 1600, was the operationally most consequential of the late Elizabethan chartered companies. A group of London merchants had begun pressing for a royal charter for the East India trade in 1599. The first petition that year had failed — some of the leading investors had been associated with the Earl of Essex, whose disgrace and execution were proceeding through 1601, and the connection appears to have hurt the petition. The merchants tried again in 1600. Queen Elizabeth granted the charter on December 31, 1600, to George Clifford, Earl of Cumberland, and 218 named associates, including Sir James Lancaster (who would command

the Company's first voyage), Sir John Harte and Sir John Spencer (both former Lord Mayors of London), the adventurer Edward Michelborne, the courtier William Cavendish, and a wide range of London aldermen and merchants. The corporate name on the face of the charter was "The Governor and Company of Merchants of London Trading into the East Indies."

The terms of the charter specified the institutional features the form had by then standardized. The Company received a fifteen-year monopoly on English trade with all countries east of the Cape of Good Hope and west of the Straits of Magellan — that is, the entire range from the south Atlantic through the Indian Ocean to the western Pacific. Any English subjects who breached the monopoly without license from the Company forfeited their ships and cargoes (half to the Crown, half to the Company) and were liable to imprisonment at the royal pleasure. The Company was authorized to hold property, sue and be sued, use a common seal, conduct its own internal governance through a Governor and a Court of Committees (later called the Court of Directors), and continue its existence beyond the lifetimes of its individual members. The corporate-personality features the canon-law tradition had produced were embedded in the charter without specific articulation; they were by 1600 simply what an English corporation possessed.

The starting capital subscribed for the Company was approximately £68,373 — a large sum for a single venture in an English economy whose national income at the time was perhaps £15 million per year. The first voyage sailed in February 1601 under Sir James Lancaster aboard the *Red Dragon*, a thirty-eight-gun vessel the Earl of Cumberland had contributed to the Company, accompanied by the *Hector*, the *Ascension*, and the *Susan*. The voyage reached Aceh in Sumatra, Bantam in Java, and the Moluccas, and returned to London in

September 1603 with cargoes of pepper, cinnamon, and cloves whose sale produced a strong return for the subscribers.

The operational structure of the Company across the first half of the seventeenth century was the temporary joint stock. Each voyage was funded as a separate subscription — investors signed up to a particular expedition, contributed their share of the capital, and received their share of the returns when the expedition's accounts were closed. The pattern was a familiar one — it was essentially the financing structure of a single trading voyage scaled up and conducted through a corporate vehicle that supplied the legal and administrative continuity individual voyages could not maintain. The Company's institutional features — the Governor, the Court of Committees, the headquarters at Crosby House in Bishopsgate (acquired 1621) and from 1638 at the building on Leadenhall Street that would come to be called East India House — provided continuity across voyages. The capital itself was raised, deployed, and returned within each voyage's accounting period.

Cromwell's reorganization of the Company in 1657, partly in response to commercial difficulties the Company had faced during the Civil War period and partly because Cromwell's regime found the chartered-monopoly model useful to its own revenue interests, established the permanent joint stock. Investors now held shares in the Company itself rather than in individual voyages; capital remained with the Company across operating periods; and the secondary market in Company shares emerged at Jonathan's Coffee House and Garraway's in the City of London as the mechanism through which investors could realize their positions without the Company having to liquidate. The new structure followed in its operational essentials the pattern the Dutch VOC had established more than half a century earlier and that the following section examines. The permanent capital allowed the

Company's operational scale to increase across the late seventeenth and eighteenth centuries — voyages became larger, the range of factories (the trading stations the Company maintained in Asian ports) expanded, and the operational reach of the Company in the Indian Ocean became wider.

The operational consequences of the form's application across the seventeenth and eighteenth centuries deserve the kind of specification the case requires. The 1600 charter had been an instrument for organizing trade in spices and Asian commodities. By the 1750s the East India Company was conducting diplomatic relations with Indian princes on terms recognized by the Mughal court and by the rival European trading companies; raising and equipping its own armies (the three Presidency armies — based at Madras, Bombay, and Bengal — eventually totaled approximately 260,000 soldiers, twice the size of the British regular Army at points across the late eighteenth century); administering courts in territories the Company controlled; and increasingly functioning as a quasi-sovereign in Bengal and the broader range of regions where Mughal authority had collapsed. The Battle of Plassey in June 1757 — Robert Clive's victory over the Nawab of Bengal Siraj-ud-Daulah — and the subsequent assumption of the *diwani*, the Mughal-recognized right to collect the revenues of Bengal, Bihar, and Orissa, in 1765, converted the Company from a trading entity into a territorial power administering tens of millions of subjects. The Bengal famine of 1769–1773, in which approximately ten million people died, occurred under the Company's administration and was considerably worsened by Company revenue-extraction policies — the *diwani* revenues were extracted at the legally maximum levels regardless of the famine conditions — that the 1600 chartering had not specifically contemplated and that the early-seventeenth-century investors could not have anticipated. The institutional logic of the form,

accumulating across more than a century and a half of operating practice, produced consequences that no individual decision-maker in the chain had specifically designed. The investors at the 1600 chartering had sought commercial returns from spice imports. The Bengal famine was a downstream consequence of operational decisions taken across generations of subsequent practice under the form the original chartering had created.

The English chartered-trading-company pattern had a contemporary Dutch counterpart whose structural features differed in operationally important respects and whose subsequent history supplied an instructive comparison. The Dutch arrangement was, in several structural particulars, ahead of the English. The next section handles the Verenigde Oost-Indische Compagnie.

Four — The Dutch VOC

The Dutch faced a structural problem in 1601 that paralleled the English problem but that the configuration of Dutch commercial society addressed differently. Multiple Dutch *Voorcompagnieën* — pre-companies — had been operating to the East Indies through the 1590s. The first Dutch voyage to the Indies had sailed in 1595 under Cornelis de Houtman; subsequent voyages had been mounted by separate groups of merchants in Amsterdam, Middelburg, Rotterdam, and the other principal Dutch trading cities, each funded by its own subscribers, each competing against the others as well as against the Portuguese and the newly chartered English. The fragmentation reduced Dutch returns by driving up the prices at which the Dutch competed for cargoes in the Asian ports and by reducing the prices at which the Dutch sold those cargoes at home. The Estates General of the Dutch Republic, then engaged in the long war for independence against the Habsburg Spanish monarchy and dependent on commercial returns to underwrite the military effort, wanted the Dutch effort consolidated against the Portuguese-Spanish combination. The institutional solution, designed by Johan van Oldenbarnevelt — the Grand Pensionary of Holland and the Republic's principal executive figure — was to merge the *Voorcompagnieën* into a single chartered entity with monopoly rights over all Dutch trade east of the Cape of Good Hope. The Verenigde Oost-Indische Compagnie was chartered on March 20, 1602.

The structural features that distinguished the VOC from the contemporary English East India Company deserve specification because several of them would shortly become standard features of the modern corporation. First, although the chartering provided for an initial twenty-one-year term with provision for periodic liquidation, in operational practice the capital became permanent. Investors who

wished to realize their positions could not withdraw capital from the Company but could only sell their shares to other investors. The permanent-capital structure was an early operational fact of the VOC rather than a feature of its 1602 charter. Second, Article 10 of the charter specified that "all the residents of these lands may buy shares in this Company." Subscription was open to the general public during a month-long initial public offering in August 1602 with no minimum and no maximum investment. Approximately 1,143 investors subscribed. The famous case of Neeltgen Cornelis, the housemaid of one of the founding directors Dirck van Os, who subscribed 100 guilders on the last night of the subscription period — at a wage of approximately half a guilder a day, this was many months of income — supplies the operational illustration of how broadly the subscription reached into Dutch society. The total capital subscribed was 6,440,200 guilders, an enormous sum that exceeded the contemporary English East India Company's initial capital by roughly a factor of ten and that exceeded the capital of any prior commercial entity in European history. Third, the charter formally extended limited liability not only to the *participanten* (the non-managing investors) but to the *bewindhebbers* (the seventy-six, later sixty, managing directors). Limited liability for managing directors was a structural innovation; in most contemporary forms the directors bore unlimited liability for the entity's operations. The 1602 chartering of full limited liability across both ownership classes is one of the operationally significant moments in the development of the modern corporate form. Fourth, the VOC's quasi-sovereign powers were explicit on the face of the charter — the right to build forts, maintain armies, conclude treaties with Asian rulers, strike coins, wage war, and conduct the broader range of state-like operations that the East Indies trade required. The Company was, in effect, a delegated arm of Dutch sovereignty operating beyond the

Cape.

The Amsterdam secondary market in VOC shares emerged organically from the permanent-capital structure. Investors who wanted to realize their positions had to find buyers among other investors. The merchants of Amsterdam, accustomed to dealing in commodities and bills of exchange on the New Bridge (Nieuwe Brug) and in St. Olaf's Chapel, added VOC shares to the daily business they conducted in those locations. The city authorities, observing the trade, ordered an exchange building constructed in 1607. The Hendrick de Keyser Exchange opened in 1611 in Dam Square. A city bylaw established trading hours (every weekday, eleven o'clock to noon), specified that deals struck outside the building were null and void in court, and concentrated the trade where the city could observe and tax it. The VOC itself had not founded the exchange and did not regulate the share trade — the Company's role was confined to recording transfers in the East India House capital book, a procedural requirement for the transfer of ownership to take legal effect. The market emerged through the operation of the form rather than through its design.

The market produced its own developments. Isaac Le Maire, a former VOC director who had been removed from the management after a dispute over Company strategy, organized a syndicate that used forward contracts to bet against VOC share prices — the world's first organized short-selling operations, conducted against the share whose existence had created the market in which they were conducted. The Company's directors objected. The Estates General prohibited short-selling on several occasions across the early seventeenth century. The operations continued despite the prohibitions. Joseph de la Vega's *Confusión de Confusiones*, published in 1688 in Amsterdam, supplied the first full-length book on the operations of a stock exchange — bull

and bear positions, the techniques of speculation, the cycles of confidence and panic the market produced, the broader range of operational practices the exchange had developed across the eighty-six years of its existence. The book is sometimes read backward as a precursor of modern speculative literature; what it actually records is that by the late seventeenth century the operational practices of organized share trading had matured to the point where a participant could write a book about them.

The VOC's operational reach across the seventeenth century produced both the operational accomplishment the chartered form was capable of and the operational pathology the same form made possible. Between 1602 and 1796 the Company dispatched approximately 4,785 ships and roughly one million Europeans to the East Indies trade, of whom approximately 340,000 returned; the gap measures the mortality the trade required. The Company netted more than 2.5 million tonnes of Asian trade goods across the operating period. Its capital and reach exceeded the English East India Company's by a wide margin through most of the seventeenth century; the Dutch share of intra-Asian trade across that period was the largest of any European company, and the Company's reach extended from the Cape across the Indian Ocean to Persia, India, Ceylon, the Indonesian archipelago, Taiwan, Japan, and the Pacific.

The same operational reach produced the Banda Islands massacre of 1621. The Banda Islands, a small archipelago in the Moluccas (modern eastern Indonesia), were the principal source of nutmeg and mace in the world economy of the early seventeenth century. The Bandanese had concluded prior agreements with the VOC that the Company's senior officer in the Indies, Jan Pieterszoon Coen, regarded as having been violated. In April and May 1621, Coen led a VOC expedition to the

islands and conducted the systematic killing of approximately fourteen thousand of the roughly fifteen thousand inhabitants — by execution, by slaughter, by starvation following the expulsion of the surviving population from their lands. The islands were then repopulated with Dutch planters and enslaved laborers brought in from elsewhere in the archipelago, who produced nutmeg and mace under VOC monopoly control across the following two centuries. Coen's famous line to the Heeren XVII (the seventeen-member board of directors in the Republic) in 1614 — "we cannot carry on trade without war nor war without trade" — captured the operational logic the Company's directors understood themselves to be operating under. The chartered form, given quasi-sovereign powers and operational scale across half a world, produced operations that any modern reader would register as among the graver pathologies of the form's history.

The structural template for the modern corporation, in its operational essentials, was essentially complete in the Dutch case by roughly the second decade of the seventeenth century. Permanent capital, public subscription, freely transferable shares, limited liability across both ownership classes, an active secondary market in shares, central management distinct from ownership, perpetual existence in legal contemplation, the capacity to hold property and conduct litigation in the corporate name — every feature the modern corporation possesses except the constitutional standing that the form would acquire in the American case three centuries later was present in the VOC of approximately 1620 in operational form. The subsequent institutional development of the corporate form would consist principally in the form's application to a widening range of purposes, the development of the doctrinal and regulatory machinery that contemporary commercial society would require, the form's adaptation to the industrial and broader commercial conditions of the centuries that followed, and the

constitutional development that the American case would produce. The structural template, by 1620, was largely in place. The English East India Company would catch up to the Dutch template across the seventeenth century through the 1657 Cromwellian reorganization and subsequent developments. The chartered trading companies of the rest of the seventeenth century — French, Danish, Swedish, the various smaller ventures — would model themselves on the VOC and EIC patterns. The form was operationally available.

Five — The Chartered Company as Colonial Vehicle

The chartered-trading-company form had been built to organize long-distance commerce. The same form, with relatively modest adaptation, could be applied to colonial settlement, banking, and the slave trade across the early seventeenth century. The Crown found the form useful for the same reasons that had recommended it for trade: the Crown could authorize colonial ventures and reserve sovereign claims to the territories without bearing the costs of underwriting the settlements directly. The investors could pool capital, accept the risks, and receive whatever returns the colonies might produce. Each application of the form to a new purpose involved persons facing specific problems with the materials the prior generation had left available — the chartered-corporation form, the precedents the canon law and English common law had supplied, the operational record of the existing chartered trading companies — and reaching for those materials because they were what existed.

The Virginia Company was chartered by James I on April 10, 1606, as two component bodies — the Virginia Company of London (authorized to settle the coast between 34° and 41° north latitude) and the Virginia Company of Plymouth (authorized to settle between 38°

and 45° north). The London Company landed 104 settlers at Jamestown in May 1607 — the first permanent English settlement in North America. The Plymouth Company's settlement at Sagadahoc in present-day Maine, established in August 1607, was abandoned the following spring. The Virginia Company was rechartered in 1609 with expanded territorial grants and conversion to full joint-stock-corporation status with public sale of shares, and rechartered again in 1612 with further modifications. Sir Edwin Sandys, a leading Parliamentary politician of the day, took control of the Company in 1619 and conducted an ambitious settlement program — approximately 3,500 emigrants arrived in Virginia between 1619 and 1622. The Powhatan attack of March 1622, which killed approximately 347 settlers (roughly a quarter of the colonial population at the time), combined with internal disputes among the directors and the Company's continuing financial difficulties prompted the Privy Council to commence an inquiry in 1623. The charter was revoked on May 24, 1624, and Virginia became a royal colony.

The Virginia case supplies an early illustration of a pattern the case will track across its broader scope. The Company had failed; the colony survived. The institutional form had been applied to a purpose — colonial settlement — for which its commercial-pooling structure had proven inadequate. The investors had not received the returns the prospectus had promised. The Company's internal governance had collapsed under the strain of operating across the Atlantic distance. The Crown had assumed direct sovereignty over the territory the Company had been organized to settle. But the colony continued under royal administration; the settlers and their descendants accumulated tobacco production across the following decades; the institutional infrastructure the Company had built — the Jamestown government, the system of land patents the Company had begun issuing, the broader range of

administrative arrangements — continued operating under the royal regime that replaced the Company. The form's failure in Virginia did not retire it from use. The next major English colonial venture, the settlement of New England, would use the same form again.

The Massachusetts Bay Company was chartered on March 4, 1629. Its origins reached back through the New England Company of 1628, the Dorchester Company of 1623, the Council for New England of 1620, and the broader chain of chartered bodies through which the Crown had been licensing English settlement of the New England coast across the preceding decade. The 1629 charter granted a corporate body composed predominantly of Puritan investors and their associates the territory from three miles north of the Merrimack to three miles south of the Charles River and westward to the South Sea. The Company's structure was the standard chartered-corporation form — a Governor, a Deputy Governor, a body of Assistants, and the broader range of features the form had standardized.

The operational innovation that distinguished the Massachusetts Bay venture from the Virginia Company was a decision made by the Puritan leadership in August 1629 and formalized in the Cambridge Agreement of that month: the charter and the Company's General Court would be transferred to New England, meaning the corporation's governance would be conducted in the colony itself rather than in London. John Winthrop, who would shortly become the Company's Governor, and the Puritan emigrants of the 1630 Great Migration carried the charter to Massachusetts. The decision converted the Company from a London-based investment vehicle into the de facto government of the colony for the following fifty-five years. The Company's General Court — Governor, Deputy Governor, Assistants, and (from 1634) elected freemen of the colony — became the legislature of Massachusetts Bay.

The Company's officers became the colony's officers. The Company's charter became the colony's constitution. The chartered-corporation form was, again, being applied to purposes its original chartering had not specifically contemplated. The device built for commercial pooling of capital was now functioning as the constitutional framework of an English colonial society for whose religious self-government the corporate form supplied an institutional vehicle whose distance from royal supervision the Puritan emigrants particularly valued. The charter was eventually revoked under Charles II in October 1684 in the broader Stuart reorganization of the colonies; the colony was reconstituted under a new royal charter granted by William and Mary in 1691. But across the fifty-five years from 1630 to 1684, the institutional life of Massachusetts had been conducted through the operational machinery of a chartered company.

The Hudson's Bay Company was chartered by Charles II on May 2, 1670, as "The Governor and Company of Adventurers of England trading into Hudson's Bay." Prince Rupert, the King's cousin and the Company's first Governor, was the principal sponsor; the founding subscribers included the King's brother James, Duke of York (later James II), Lord Ashley (later Earl of Shaftesbury), and a range of leading London financiers and courtiers. The charter granted the Company a trade monopoly over the watershed of Hudson's Bay — a territory of roughly 1.5 million square miles called Rupert's Land, embracing what is now most of northern Canada — together with authority to establish forts, enter into treaties with indigenous peoples, conduct judicial functions within its territories, and govern the trade. The Company would shortly become and remain the principal vehicle for English (and subsequently British) commercial activity across the northern reaches of North America. Its sovereign functions over Rupert's Land continued until the territory's sale to the new Dominion

of Canada in 1869–1870; the Company itself continues today as a Canadian commercial retailer, the oldest joint-stock company in continuous operation in the English-speaking world.

The Royal African Company was chartered by Charles II in 1672 as the successor to the earlier Company of Royal Adventurers Trading to Africa, which had operated from 1660 to 1672 and which had collapsed under the financial strain of the second Anglo-Dutch war. The 1672 chartering established a new corporation with a monopoly over English trade with West Africa, including the trade in enslaved Africans. The Duke of York — later James II — was a principal founding subscriber and served as the Company's first Governor. The investors included leading figures in the City of London, members of the Stuart court, and a range of merchants and financiers whose returns from the Company's operations would be considerable across the following quarter-century. The Royal African Company conducted the English slave trade as a chartered monopoly from 1672 until 1698, when Parliament — under sustained pressure from English merchants outside the Company who wanted access to the trade — opened the slave trade to other English merchants on payment of a ten-percent duty (the "Ten Percent Act" of 1698).

Across the monopoly period the Royal African Company transported approximately 150,000 enslaved Africans from West Africa principally to the English Caribbean colonies (Barbados, Jamaica, the Leeward Islands) and in smaller numbers to the mainland colonies. The Company built and maintained the principal English slaving factories on the West African coast — Cape Coast Castle (acquired from the Dutch in 1664 and considerably enlarged across the chartering period), James Fort on the Gambia River, and a network of smaller posts along what was called the Slave Coast. The institutional infrastructure of the

English slave trade was built through the chartered-corporation form. The investors received returns from the trade across the chartering period — recorded returns ran at between five and ten percent per annum in the more profitable decades, with sizeable losses in others. After 1698 the trade expanded under the participation of additional English merchants; the volume of English slave-trading rose sharply through the eighteenth century until the Slave Trade Act of 1807 prohibited British participation in the trade entirely. The Royal African Company's role in building the operational infrastructure of the English Atlantic slave economy — the factories, the trading practices, the financial arrangements, the institutional connections between West African coastal polities and English commercial interests — supplied the foundation for the larger and broader-based English slave trade of the eighteenth century. The chartered-corporation form, applied to the slave trade, produced what the historical record contains.

The Bank of England was chartered on July 27, 1694. The institutional context was the Williamite regime's need for war financing — the Nine Years' War against Louis XIV's France had been straining English public credit since 1688, and the conventional sources of royal revenue (customs, excise, the land tax) were inadequate to the war's costs. William Paterson, a Scottish merchant and financial projector, had proposed a Bank that would lend £1,200,000 to the government at eight percent interest, the subscribers receiving in exchange a corporate charter that authorized them to issue banknotes and conduct banking business. The Bank's chartering on the standard chartered-corporation pattern — Governor, Deputy Governor, twenty-four Directors, freely transferable shares, perpetual existence in legal contemplation — combined the form's commercial features with a new operational purpose, the institutionalization of public credit. The Bank's chartering tied the new financial regime directly to the post-Glorious Revolution

political settlement. Its institutional integration with the English government's borrowing requirements would deepen across the eighteenth century. The chartered-corporation form, by 1694, was operating not only as the vehicle for English long-distance trade and colonial settlement and slave-trading but as the operational machinery of English public finance.

The chartered-corporation form, across the seventeenth century, had been applied to a widening range of purposes — long-distance trade, colonial settlement, the slave trade, banking, the broader range of operations the early modern English commercial and colonial economy was conducting. Each application emerged from people facing specific problems with the materials at hand. The Crown wanted English colonial settlement without underwriting the costs; the merchants wanted commercial opportunities with the protection of monopoly and the risk-distribution of joint-stock subscription; the Puritan emigrants wanted institutional autonomy in New England; the Stuart court wanted the revenues the slave trade could produce; the Williamite regime wanted institutionalized public credit. The chartered-corporation form was the institutional vehicle available in each case. The operational consequences across the colonial territories, the Indian and African coasts, the Caribbean plantations, and the broader range of regions where the chartered companies reached were the cumulative product of the form's application across the century. The institutional accomplishments — colonial-economic development, the building of long-distance commercial networks, the institutional infrastructure of English public credit, the operational capacity for collective ventures the form supplied — were present in the record. The institutional pathologies — the Atlantic slave trade, the indigenous depopulations the colonial settlements produced under disease and dispossession, the operational practices the chartered companies conducted under their

delegated sovereign authority — were equally present. The reader registers both because the historical record contains both.

Six — The Approach to 1700

By the approach of 1700 the chartered-corporation form had been applied across the principal commercial, colonial, and public-credit purposes the English economy required. The operational features that would shortly become standard in the modern corporation — pooled capital, transferable shares, corporate personality, perpetual existence, central management distinct from ownership, limited liability in varying forms across the different chartered bodies — were present in their seventeenth-century operational essentials across the East India Company, the Hudson's Bay Company, the Royal African Company, the Bank of England, and the broader range of chartered bodies. An active secondary market in shares had developed in London — share trading at Jonathan's Coffee House and at Garraway's in Exchange Alley, the first published price lists in the 1690s by John Castaing and others, the broader operational pattern of the London market that would mature across the early eighteenth century. The Royal Exchange in Cornhill, which had been built in 1571 by Sir Thomas Gresham as a commodities-and-bills exchange and which had served as the principal venue of London merchant business across the late Elizabethan and early Stuart periods, was operating by the end of the century as the central institution of London commercial life around which the broader secondary-market activity organized.

Tensions within the chartered-corporation system had accumulated across the seventeenth century. The chartered monopolies were politically contested. The Royal African Company's monopoly had been broken in 1698 under Parliamentary pressure from outside merchants.

Similar pressures were bearing on the East India Company — a rival "New East India Company" was chartered in 1698, and the two would shortly merge in 1709 as the United Company of Merchants of England Trading to the East Indies. The directors of the major chartered bodies were politically powerful in their own right; large sums had been deployed in the Glorious Revolution and its political settlement, the Bank of England's 1694 chartering had directly tied the new financial regime to the Williamite political arrangement, and the operational relationship between the major chartered corporations and the post-Revolution English state was close in ways that subsequent reformers would find concerning. The chartered companies' conduct in the colonial territories and in the Indian and African trades had produced operational records that contemporary critics were beginning to register in print. Daniel Defoe's *An Essay upon Projects* (1697) and Jonathan Swift's later writings examined the broader pattern of late-Stuart projecting and corporate manipulation in terms that anticipate the eighteenth-century critique. The form's capacity for speculative excess — particularly in the operations of the London secondary market — was visible in the operations of the 1690s.

The eighteenth century would shortly subject the chartered-corporation form to the first major institutional crisis it had encountered in England. The South Sea Company, chartered in 1711 to consolidate British government debt in exchange for trading privileges in Spanish America, would in 1720 produce the speculative bubble whose collapse would prompt the Bubble Act of June 1720 and the broader institutional retreat from joint-stock corporate formation that would dominate British commercial practice across the following century. The American colonial development of the corporate form would proceed across the same eighteenth century along a different path — ecclesiastical and educational corporations dominant through most

of the period, business corporations multiplying rapidly after independence, the form's principal institutional development moving from England to America as the eighteenth century proceeded. The two paths would converge at the constitutional moment John Marshall's opinion in *Dartmouth College v. Woodward* supplied in 1819 — a moment whose origins traced back through the colonial chartering of Dartmouth in 1769, through the long English common-law tradition Coke had consolidated in 1612, through the canon-law doctrine Innocent IV had articulated in the 1240s, and through the medieval English experience of chartered boroughs, guilds, and colleges whose institutional inheritance Coke had systematized. Part II handles the path from 1700 through 1819.

Part II — The Bubble, the Retreat, and the American Multiplication, 1700 – 1819

Thomas J. Bryan with Claude (Anthropic) · 2026

The chartered-corporation form, by approximately 1700, had been applied across long-distance trade, colonial settlement, the slave trade, public finance, and the broader range of commercial and quasi-public purposes the late Stuart and early Hanoverian English economy required. The institutional residue the seventeenth century had accumulated — the canon-law personality doctrine that Innocent IV had consolidated in the 1240s, the English common-law articulation that Coke had supplied in *Sutton's Hospital* in 1612, the East India and Hudson's Bay and Royal African Companies operating across half the world, the Bank of England chartered in 1694 to underwrite the Williamite war effort — was available to the eighteenth-century English economy as the operational machinery the next generation would inherit.

Part II tracks what was made of that inheritance across the long eighteenth century. The opening section follows the formation of the South Sea Company in 1711 — Robert Harley's mechanism for managing the debts the War of the Spanish Succession had accumulated — and the speculative collapse of 1720 that produced the Bubble Act of June that year and broadly suppressed British joint-stock corporate formation for the following century. The second section follows the eighteenth-century British retreat from chartering and the limited adaptations the form underwent in Britain across the period. The third section turns to the American colonial pattern, where the corporate form operated principally through ecclesiastical and educational and

charitable charters — Harvard chartered in 1650, William and Mary in 1693, Yale in 1701, the network of colonial colleges that would eventually become the Ivy League, the colonial churches, the Massachusetts charitable bodies, and the broader range of non-commercial corporations through which American institutional life was conducted under chartered authority. The fourth section examines the 1741 extension of the Bubble Act to the colonies in the wake of the Massachusetts Land Bank controversy and the operational consequences of that extension across the late colonial period. The fifth section turns to the post-Revolution American development — the founding-era constitutional treatment of corporations, Hamilton's chartering of the First Bank of the United States in 1791 and the constitutional debate it produced, and the multiplication of state-chartered corporations across the 1790s and the following decades. The closing section handles *Dartmouth College v. Woodward* in 1819 and the constitutional consolidation of the American corporate form that Marshall's opinion produced.

The institutional shape that emerged by 1819 was strikingly different from the seventeenth-century English form the same case study traced in Part I. The post-Revolution American practice multiplied state-level chartering at a scale and speed no European economy had matched. The British development had been suppressed by the Bubble Act and by the broader institutional caution the South Sea collapse had produced; the American development had been freed from those restraints by independence and by the federal structure that placed corporate chartering in the hands of state legislatures responding to local commercial demand. By 1819 the United States had become — in Robert Wright's phrase — the first corporation nation. The institutional foundation that the present case will track across the nineteenth century into the modern American corporation was largely in

place by the end of Marshall's opinion.

One — The South Sea Company and the Collapse of 1720

The Williamite and early Hanoverian wars against France had accumulated public debts the conventional sources of English revenue could not service. The Nine Years' War of 1688–1697 had cost approximately twenty million pounds and had left the English crown carrying public debts on a scale that pre-Revolution English finance had never sustained. The War of the Spanish Succession, which followed from 1701 to 1713, added further debts that by the war's conclusion brought the total national obligation to roughly fifty million pounds. The debts were carried at varying rates of interest, in fragmented form across multiple government departments and military funds, and at a cost to the public revenue that absorbed an increasing share of the annual budget across the early eighteenth century. The Bank of England, chartered in 1694 specifically to lend to the Crown, was carrying roughly £3.4 million of the debt by 1710 and had reached the institutional limit of what its capital structure could absorb without recapitalization. The system the post-1688 financial revolution had built was, by the second decade of the eighteenth century, straining at the edges of its operational capacity.

Robert Harley, who had become Chancellor of the Exchequer under the new Tory ministry in June 1710 and would shortly be elevated to Lord High Treasurer as Earl of Oxford and Earl Mortimer, faced the structural problem the war had created and reached for the institutional materials available. The Bank of England, controlled by Whigs aligned with the previous ministry, was politically unavailable to the new Tory regime. The chartered-corporation form, which had supplied the Bank's

structure in 1694, was available for replication on a different political base. Harley had become acquainted with John Blunt, a businessman and financial projector who served as Secretary of the Sword Blade Company. The Sword Blade Company had been chartered in 1691 ostensibly to manufacture hollow-ground French-style sword blades, but Blunt had converted it into a banking and speculation vehicle, principally by acquiring confiscated Jacobite estates in Ireland and exchanging Sword Blade shares for army debentures the government had issued in lieu of cash payments to soldiers. The mechanism — a chartered corporation accepting government paper at face value in exchange for its own shares — supplied the conceptual template Harley would apply at far larger scale through the new company he proposed.

The South Sea Company was created by Act of Parliament in May 1711, with the corporate name "The Governor and Company of the merchants of Great Britain, trading to the South Seas and other parts of America, and for the encouragement of the Fishery." The Company's commercial purpose was nominally to conduct British trade with Spanish America — the "South Seas" of the corporate name referring to the eastern Pacific and the Spanish-controlled territories of South America and the West Indies. Spain controlled access to those territories, and at the time of the chartering the War of the Spanish Succession was ongoing, so the commercial prospects were theoretical rather than operational. The Company's actual function was the debt-conversion mechanism that lay behind the commercial cover. Holders of approximately £9 million in short-term unfunded government debt — including the floating debts that various government departments had accumulated across the war years — were offered the option to exchange their debt for shares in the new Company. The government agreed to pay the Company a perpetual annuity of £576,534 (approximately six percent of the £9.5 million debt

converted) as compensation for the Company's assumption of the obligation. The Company's shareholders would receive the annuity as their return. The mechanism converted unfunded short-term debt into permanent capital invested in shares of a chartered corporation that received a guaranteed annual payment from the Crown.

Harley himself became the Company's Governor. The investors who subscribed in 1711 included Harley (who exchanged £8,000 of debt), the government (which exchanged £750,000 of its own paper), and approximately two hundred large debt-holders who supplied the initial conversion. The Hollow Sword Blade Company — the Blunt vehicle from which the conceptual template had been drawn — became the South Sea Company's banker. The corporate machinery — a Governor, Court of Directors, share capital, dividend mechanism, secondary market in Company shares — was the standard chartered-corporation pattern the seventeenth century had established. The 1711 Act assigned the Company a monopoly on British trade with the eastern Pacific and South America when the war ended.

The Treaty of Utrecht in 1713 formalized the end of the War of the Spanish Succession. The terms granted Britain the *Asiento de Negros* — the licensed monopoly on supplying enslaved Africans to the Spanish American colonies, which Spain had previously assigned to French and Portuguese contractors. The contract specified the supply of 4,800 enslaved Africans per year to Spanish American ports across thirty years. Britain also received the right to send one annual trading vessel of limited tonnage to a Spanish American port — the *navío de permiso*. The South Sea Company received both privileges. The commercial returns proved disappointing across the following years: Spanish administration of the *Asiento* was restrictive, the trading vessel arrangement produced limited returns, the Spanish authorities

periodically suspended British activities under various pretexts, and the actual trade with Spanish America never approached the scale the 1711 chartering had anticipated. The Company's commercial function across its first decade was minor. Its financial function — converting government debt into share capital that paid a guaranteed annuity — continued to operate.

The structure was politically integrated with the Hanoverian succession. King George I, who came to the throne in August 1714 on the death of Queen Anne, assumed the Governorship of the Company in 1718. His mistress, the Duchess of Kendal, was a Company shareholder. Members of the Tory ministry, then of the Whig administrations that succeeded Harley's fall in 1714, then of the broader Hanoverian court, were Company directors or shareholders or both. By 1719 the Company had become — in the phrase the case literature has applied — too important to fail in the financial-political arrangement of the Hanoverian state.

In early 1720 the Company's directors, with John Blunt now functioning as chief executive, proposed a far more ambitious extension of the debt-conversion mechanism. The proposal was to absorb essentially all of the remaining redeemable national debt — approximately £31.5 million, on top of the £9.5 million the Company had already taken in 1711 — by exchanging it for Company shares at a price the Company would set as the conversion proceeded. The Bank of England submitted a competing proposal. Parliament accepted the South Sea Company's offer in early April 1720. The Act for Making Forth New Exchequer Bills, which formalized the arrangement, was passed in April. The Company would issue new shares to debt-holders who chose to convert; the conversion ratio depended on the market price of Company shares at the time of conversion; the higher the share

price, the less Company stock the Company would have to surrender for each pound of debt absorbed; and the Company could therefore profit on the conversion by driving up its share price during the conversion period.

The mechanism Blunt and the directors operated across the spring and summer of 1720 was designed to drive the share price upward. The Company published lists of eminent shareholders — peers, members of Parliament, royal favorites — as a way of demonstrating the stock's credibility. Selected eminent persons received shares at the offering price without having to pay immediately, with the understanding that they could sell later at the inflated market price and pocket the difference; this was, in effect, a network of bribes paid in unfunded stock to political figures whose endorsement the scheme required. The Company offered four subsequent share subscriptions across 1720, each at successively higher prices and each with installment-payment options that allowed subscribers to commit at moderate immediate cash outlay and assume the obligation for the balance later. The Company lent money to investors to purchase Company shares, using the shares themselves as collateral for the loans, on the calculation that rising share prices would more than cover the debt service. The Company traded in its own shares, using Company funds to support the price. Coffee-house operators at Jonathan's and Garraway's, where the secondary market in London shares had matured across the preceding generation, conducted increasing volumes of trade as the price rose.

The share price moved from £128 in January 1720 to £180 by the time of the April subscription, to £335 by mid-May, to £550 by late May, to £890 by early June, to over £1,000 by August. Speculative fever spread beyond the South Sea Company to the broader London market. A wave of other joint-stock proposals — insurance schemes,

agricultural ventures, mining companies, transportation projects, and a range of more dubious propositions including a famous (probably apocryphal) scheme described as "a company for carrying on an undertaking of great advantage, but nobody to know what it is" — flooded the market across the spring of 1720. These ventures became known as "bubbles." Many had no legal basis as chartered corporations; some used existing chartered companies (the Hollow Sword Blade Company, the York Buildings Company) for purposes their original charters had not contemplated; some were outright frauds; some were potentially legitimate ventures (the marine and fire insurance proposals among them) seeking to take advantage of the market enthusiasm.

The South Sea Company's directors viewed the proliferation as a competitive threat. Capital that might have flowed into South Sea subscriptions was instead being diverted into rival ventures. The Company's response was the Bubble Act of June 9, 1720 (6 Geo. 1, c. 18) — formally titled "An Act for better securing certain Powers and Privileges intended to be granted by His Majesty by Two Charters for Assurance of Ships and Merchandizes at Sea, and for lending Money on Bottomry; and for restraining several extravagant and unwarrantable Practices therein mentioned." The Act prohibited the formation of joint-stock companies without royal charter and prohibited existing chartered companies from operating beyond the scope of their charters. The Act's nominal purpose was the suppression of speculative excess; its operational purpose, lobbied for by the South Sea directors themselves, was the suppression of competition for capital that the Company required to sustain its share price. The Act received royal assent on June 11, 1720, and commenced operation on June 24.

The Bubble Act did not save the South Sea price; if anything, it briefly inflated the price further by removing competing speculative

vehicles. The share price peaked at approximately £1,050 in mid-August and began to decline. Selling pressure built across late August. By the end of August the price had fallen to £800; by the third week of September, to £400; by early October, to £200; by December, to approximately £124. The collapse triggered chains of bankruptcies among investors who had purchased on installment plans or with Company-provided loans and could not meet their obligations. International contagion connected the London collapse to the simultaneous collapse of the Mississippi Bubble in Paris (John Law's Compagnie d'Occident, whose share price had risen and collapsed across the same months on the same speculative mechanics) and to share-price declines in Amsterdam. Sir Isaac Newton, who had invested in South Sea shares, lost approximately £20,000 and reportedly remarked that he could calculate the movement of the stars but not the madness of men. The Postmaster General James Craggs, Chancellor of the Exchequer John Aislabie, and several other senior government officials were found to have received South Sea stock as bribes during the conversion legislation; Aislabie was imprisoned in the Tower; the others faced impeachment. Robert Walpole, who had warned against the scheme during its operation and who had taken his profits before the collapse, was appointed First Lord of the Treasury, Chancellor of the Exchequer, and Leader of the House of Commons in 1721 to manage the financial wreckage. The Act for Making Several Provisions to Restore the Publick Credit, passed in August 1721, confiscated the estates of the South Sea directors and redistributed funds toward the worst-affected victims of the collapse.

The longer-term institutional consequences of 1720 were the operationally significant outcomes. The Bubble Act remained on the statute book for the following one hundred and five years, until its repeal in 1825. The Act's prohibition on joint-stock formation without

royal charter — and the political risk that the granting of new royal charters carried after 1720 — effectively suppressed the formation of new English joint-stock corporations across most of the eighteenth century. New chartered corporations were sometimes formed (the Equitable Life Assurance Society in 1762, the London Assurance Company and the Royal Exchange Assurance, both of which had been specifically authorized under the 1720 Act as part of the marine insurance regime), but the rate of corporate formation in Britain across the 1720s through the 1820s was a small fraction of what would have occurred under a more permissive regime. The unincorporated joint-stock companies — partnerships with transferable shares that operated outside the corporate-charter regime — multiplied across the eighteenth century in workarounds that lawyers developed to provide commercial functionality the chartered form had been suppressed from supplying, but the protection of full corporate personality was unavailable to most British commercial enterprises across the long period the Bubble Act remained in force. The American development that the next sections track would proceed under entirely different conditions.

Two — The Eighteenth-Century British Retreat

The institutional landscape that the Bubble Act produced in Britain across the long eighteenth century deserves brief specification before the case turns to the parallel American development. Three broad features dominated the British experience between 1720 and 1825. The existing chartered corporations — the East India Company, the Bank of England, the Hudson's Bay Company, the Royal African Company through its decline, the South Sea Company itself in its much-reduced post-1720 form — continued operating across the period and grew in operational scale, particularly the East India Company whose territorial expansion in India accelerated across the late eighteenth century. New chartered corporations were created only sparingly and only after extensive Parliamentary and political maneuvering: each new charter required either a private Act of Parliament or a royal grant that political circumstances had to make available. The institutional cost of obtaining a new corporate charter in Britain across most of the eighteenth century was considerably higher than what had operated before 1720 and what would shortly operate in the post-Revolution American case.

The workaround that British commercial practice developed was the unincorporated joint-stock company — a partnership operating with transferable shares under deed of settlement, without formal corporate personality but with internal arrangements that approximated some of the commercial functionality the corporate form would have supplied. The legal status of these unincorporated companies was contested across the eighteenth century; the Bubble Act ostensibly forbade them, and the courts occasionally enforced the prohibition, but in practice the unincorporated form persisted because the commercial economy required some vehicle for pooling capital that the chartered-corporation regime was unwilling to supply. The transferable-share unincorporated

partnership operated as a kind of half-corporate hybrid across the period — investors could buy and sell their interests on the secondary market that operated at Jonathan's and Garraway's and later at the formal Stock Exchange (which the brokers themselves organized in 1773), but the partners remained personally liable for the obligations of the venture under partnership law, and the entity had no formal personality through which to hold property or conduct litigation in its own name. The hybrid was operationally awkward; it carried the risk-distribution problems of unlimited liability without the institutional clarity of full corporate form; and the British industrial revolution of the late eighteenth and early nineteenth centuries proceeded principally through partnerships and family firms rather than through chartered corporations until the legislation of the 1840s and 1850s — the Joint Stock Companies Act of 1844 and the Limited Liability Act of 1855 — restored access to the corporate form on terms that the American case had been operating under since the 1790s.

The longer-term consequences of the Bubble-Act regime for British industrial development have been debated across the modern economic-history literature. Some interpretations have argued that the suppression of joint-stock formation across the eighteenth century delayed British industrial concentration and limited the scale of British manufacturing enterprises in ways that compromised British competitive position against the Continental and American development of the nineteenth century. Other interpretations have argued that the British industrial revolution, conducted principally through partnerships and family firms, was not seriously hampered by the absence of widely available joint-stock form and that the Bubble-Act regime may even have produced a more disciplined commercial culture than the more permissive American chartering practice generated. The interpretive question lies outside what this case

requires. What the case does require is the operational point that the British and American eighteenth-century developments proceeded under different institutional regimes, that the difference was largely produced by the 1720 collapse and the legislative response to it, and that the American chartering practice that emerged after independence had no parallel suppression operating against it.

Three — The American Colonial Pattern: Eleemosynary, Ecclesiastical, Educational

The American colonial development of the corporate form across the eighteenth century proceeded along a different path from the British. Three structural features distinguished the colonial pattern. First, the chartered-corporation form was used in the colonies principally for non-commercial purposes — colleges, churches, charitable institutions, towns, occasionally land companies — rather than for the trading and banking purposes that had dominated seventeenth-century English chartering. Second, the chartering authority varied across the colonies: in some cases (Massachusetts Bay, Connecticut, Rhode Island, the proprietary colonies) the colonial assemblies issued charters under powers their original royal charters had assigned them; in other cases (the royal colonies more directly) chartering proceeded through the royal governor's office or through the Privy Council in London. Third, the operational pressures that had produced the Bubble Act in 1720 did not operate in the colonial economies, where commercial scale was much smaller and where speculative manias on the South Sea pattern did not develop until much later (the Massachusetts Land Bank controversy of 1740–1741, which the following section examines, supplied the closest colonial analogue, and the British response was specifically to extend the Bubble Act regime to the colonies in 1741).

The dominant institutional form across the colonial period was the eleemosynary corporation — Blackstone's term, drawn from canon-law sources, for corporations established for charitable purposes whose property was held for the benefit of an identifiable class of beneficiaries rather than for the commercial profit of the founders or shareholders. Harvard College supplied the foundational American example. The General Court of Massachusetts had voted £400 in October 1636 to establish a college at Newtown (renamed Cambridge in 1638). John Harvard, a Puritan minister in Charlestown, died in September 1638 leaving half his estate (approximately £779) and his library of 260 books to the new college; the institution was renamed Harvard College in his memory. The college's formal incorporation followed in 1650 when the Massachusetts General Court chartered "the President and Fellows of Harvard College," establishing a self-perpetuating corporation with the legal capacity to hold property, conduct litigation, and continue its institutional existence beyond the lifetimes of its individual officers. The 1650 charter, which remains the oldest corporate charter still operative in the United States, supplied the operational model that subsequent American colonial chartering would follow.

The College of William and Mary in Virginia received its royal charter from William III and Mary II on February 8, 1693. The Anglican establishment of Virginia had pressed for a college since the 1660s; the 1693 chartering produced the second American college and the operational center of Anglican higher education in the southern colonies. Yale College followed in 1701 when the Connecticut General Assembly authorized a "Collegiate School" intended to serve as a more orthodox Congregational alternative to a Harvard whose Puritan rigor had been perceived as softening across the late seventeenth century. The school received its name in 1718 when Elihu Yale, a former

governor of the East India Company's factory at Madras, contributed 417 books and goods valued at £562 — a contribution arranged through Jeremiah Dummer and Cotton Mather and intended to underwrite the new college's institutional development. The naming was a recognition of the donation; as one nineteenth-century commentator dryly observed, the trustees could not bring themselves to name the institution Dummer College.

The pattern continued across the eighteenth century. The College of New Jersey (later Princeton) was chartered in 1746 by the colonial governor of New Jersey as a Presbyterian institution responding to the religious revivals of the First Great Awakening. King's College (later Columbia) received its charter from George II in 1754 as an Anglican institution at New York. The Academy of Philadelphia, founded by Benjamin Franklin and others in 1751, received a collegiate charter in 1755 as the College of Philadelphia (later the University of Pennsylvania) — the only one of the colonial colleges not founded primarily for theological purposes, though it operated under Anglican direction across most of the colonial period. The College of Rhode Island (later Brown) was chartered in 1764 as a Baptist institution with notable provisions for religious liberty written into its charter: "into this liberal and catholic institution shall never be admitted any religious tests, but on the contrary, all the members hereof shall forever enjoy full, free, absolute, and uninterrupted liberty of conscience." Queen's College (later Rutgers) was chartered in 1766 as a Dutch Reformed institution. Dartmouth College, the last of the colonial colleges, was chartered on December 13, 1769, by George III on the application of Eleazar Wheelock, a Congregational minister who had been operating an "Indian Charity School" at Lebanon, Connecticut, since 1754 for the education of Native American students and who proposed to move the school to a new site at Hanover, New Hampshire, and elevate it to

collegiate status. The college's name honored the Earl of Dartmouth, who chaired the British board of trustees raising funds for the school's endowment. The Dartmouth charter would become, fifty years later, the subject of the constitutional case the last section of this part will examine.

The colonial colleges were small institutions by modern standards — Harvard enrolled approximately fifty students at mid-eighteenth century, the other colleges fewer. Their curricula were classical: Latin, Greek, Hebrew, mathematics, rhetoric, moral philosophy, theology. Their principal function was the training of clergy and (secondarily) of an educated gentry that could supply the colonies' political and professional leadership. Their chartered structure followed the same operational pattern across the variations of colonial chartering authority: a self-perpetuating board of trustees or fellows or corporation members, a president (sometimes called a rector), endowed property held by the corporation in its own name, the capacity to grant degrees, perpetual existence in legal contemplation. The eleemosynary form supplied institutional continuity across generations of presidents and trustees, immunity from the partition of property at the death of individual members, the capacity to receive bequests and benefactions across the chartered life of the institution, and the broader range of features the corporate form had developed across the canon-law and English common-law tradition the colonial chartering had inherited.

Ecclesiastical corporations followed the same pattern. The colonial churches operated as chartered corporations across most of the colonies — the Anglican parishes of Virginia and the Carolinas, the Congregational churches of New England, the various dissenting bodies (Baptists, Quakers, Presbyterians, the German pietistic communities of Pennsylvania) that received colonial or proprietary charters across the

period. The chartered congregations held the church buildings, the parsonages, the glebes (agricultural land assigned for the support of the clergy), and the broader range of physical property the congregational life required. The charter supplied the institutional continuity across the deaths of individual members and the means by which property could be held and transferred without partition.

Charitable corporations multiplied across the colonial period in the same pattern. The Society for the Propagation of the Gospel in Foreign Parts, an Anglican missionary corporation chartered in London in 1701, operated extensively in the colonies. Hospital corporations — Pennsylvania Hospital in Philadelphia, chartered 1751 at the instance of Benjamin Franklin and Dr. Thomas Bond — appeared in the larger colonial towns. Library companies, fire companies, philosophical societies (including the American Philosophical Society, organized in Philadelphia in 1743) all operated under corporate charters that supplied the institutional continuity their purposes required.

The colonial commercial development across the eighteenth century proceeded principally through other forms. Partnership was the dominant commercial vehicle. Family firms — the Brown family of Providence, the Hancocks of Boston, the various Philadelphia merchants — conducted the colonial commerce through unincorporated partnerships across generations of family succession. The colonial trades — shipping, fishing, the Atlantic re-exports of British manufactures and West Indian sugar, the southern staple production of tobacco and rice and indigo — operated through partnerships, sole proprietorships, and the occasional joint stock that operated outside formal corporate chartering. Two colonial commercial chartered corporations stand out as exceptions to the dominant non-commercial pattern: the various land companies (the Susquehanna Company of

1753 and the Ohio Company of 1747 among them) that received colonial charters for speculative land acquisition west of the Appalachians, and the New London Society for Trade and Commerce (chartered in Connecticut in 1732 and dissolved by Parliament in 1740 in the precursor to the 1741 Bubble Act extension). These were the exceptions that proved the rule. The dominant institutional pattern was non-commercial chartering of charitable, ecclesiastical, educational, and civic bodies.

The institutional residue that the colonial period accumulated and that the post-Revolution American development would inherit was an established practice of chartered corporation across the non-commercial purposes the colonial society required, an institutional vocabulary of corporate personality drawn from the English common-law tradition through Blackstone, a network of chartered institutions (the colleges in particular) whose continued operation across the Revolution would supply the test cases through which the post-Revolution corporate doctrine would be developed, and a structural disposition — perhaps an Anglo-American cultural inheritance, perhaps a function of the colonial political economy — to use the corporate form for purposes that ran beyond purely commercial profit. The post-Revolution American chartering boom that the fifth section of this part will examine extended the practice into the commercial purposes the colonial period had largely left to partnership and proprietorship.

Four — The Bubble Act Extended: The Massachusetts Land Bank, 1740–1741

The single colonial episode that approximated the British speculative pattern of 1720 was the Massachusetts Land Bank controversy of 1740–1741. The episode supplies the operational illustration of why the eighteenth-century British concerns about joint-stock formation reached the colonies, and the legislative response — the extension of the Bubble Act to America in 1741 — supplied a constraint on colonial chartering that operated across the late colonial period and that the post-Revolution chartering boom would shortly remove.

The Massachusetts economy of the late 1730s faced a structural problem the colony's currency arrangements were inadequate to address. Hard specie was perennially scarce — the colonial trade deficits with Britain drained metal coinage faster than it accumulated — and the colonial paper money the Massachusetts General Court had issued across the preceding decades was depreciating against sterling, producing inflation and complicating commercial relations. A group of Massachusetts inhabitants, principally drawn from the rural debtor class and from the merchants of the smaller commercial towns outside Boston, proposed to organize a Land Bank — a private corporation that would issue paper notes backed by the real estate mortgages of its subscribers. The notes would circulate as a private currency; subscribers would pledge their land as security for their share of the note issue; the institution would, in effect, monetize the colony's accumulated landed wealth. A competing proposal, the Silver Bank, came from the Boston mercantile establishment and would have issued notes redeemable in silver.

The Land Bank scheme received approximately 1,000 subscribers across the colony in 1740. The Silver Bank received approximately 130

subscribers, principally drawn from the Boston merchant elite. Governor Jonathan Belcher, who supported the Silver Bank position and opposed the Land Bank, dismissed Land Bank subscribers from public office, removed Land Bank justices from the bench, and lobbied through colonial agents in London for legislative intervention to suppress the Land Bank entirely. The Boston merchants — Thomas Hutchinson among them, later a major figure in Massachusetts politics in the years approaching the Revolution — refused to accept Land Bank notes in payment and published public notices to that effect.

The colonial agent for Massachusetts in London, Francis Wilks, lobbied for the extension of the Bubble Act to the colonies. The Bubble Schemes (Colonies) Act 1740 (14 Geo. 2, c. 37, passed by Parliament in 1741, the date of passage being 1741 despite the regnal-year style) extended the prohibitions of the 1720 Bubble Act to America and dissolved the existing unchartered joint-stock companies operating in the colonies. The Act specifically targeted the Massachusetts Land Bank. Wilks wrote to Governor Belcher on March 27, 1741: "A bill is just passed the House of Commons to extend the Act commonly called the Bubble Act, passed in 1720, to the plantations in America... I am satisfied it is the determined resolution of the Parliament to dissolve all companies in America who have put forth any notes or bills to pass in public, and to prevent any other from doing it hereafter." The bill received its third reading in the House of Lords on April 9, 1741, and the royal assent shortly thereafter. The Land Bank was effectively destroyed.

The operational consequences for the Land Bank's subscribers were considerable. The Act provided that any possessor of notes issued by the dissolved companies could bring action against the company or against any person who within six years had been or might thereafter be

connected with the undertaking. Each connected person was declared personally liable for the company's note obligations. The Land Bank subscribers — many of whom had pledged their land as collateral and now found themselves personally liable for the Bank's note issue without the institutional protection a chartered corporation would have supplied — faced a chain of bankruptcies and forced land sales across the following years. Samuel Adams, whose father Samuel Adams Sr. had been a Land Bank director, watched his family lose heavily in the legislative aftermath; the experience supplied part of the political education of the figure who would shortly become one of the leading Massachusetts Revolutionary organizers.

The broader colonial response was muted. No other colony had developed a joint-stock corporation on the Land Bank scale, and the Act's most immediate operational effect was the dissolution of the Massachusetts venture rather than any general restraint on a colonial chartering activity that was not yet occurring at scale. But the Act remained on the statute book across the remaining colonial period, and the colonial assemblies after 1741 operated under the understanding that joint-stock chartering for commercial purposes would face Parliamentary scrutiny if it developed on any consequential scale. The institutional caution the Act produced contributed to the colonial pattern by which the chartered-corporation form continued to be used principally for non-commercial purposes across the period from 1741 to the Revolution.

The Bubble Act of 1720 and its 1741 colonial extension were among the British statutes that the post-Revolution American state legislatures were free to disregard. The Articles of Confederation and the subsequent Constitution placed the authority to charter corporations in the hands of the state legislatures (and, in limited cases, of Congress, as

the Hamilton-Jefferson debate the next section examines made clear). The state legislatures of the 1780s and 1790s, no longer constrained by Parliament's prohibitions and increasingly responsive to commercial pressures the post-Revolution American economy was generating, began chartering corporations at a rate and scale the British Bubble-Act regime had specifically prevented for the preceding seventy years. The American chartering boom proceeded under no Bubble Act, no royal monopoly grants, no centralized chartering authority, and a federal structure that produced competition among state legislatures to attract corporate formation. The institutional setting that produced the early American corporation was structurally different from the British setting of the same decades.

Five — The Post-Revolution Multiplication: Hamilton's Bank and the State-Chartering Boom

The American Revolution did not, on its face, alter the legal status of the corporations that had been chartered under colonial authority. The colleges continued operating; the churches continued operating; the towns and the philanthropic and learned societies continued operating. The institutional question that the Revolution produced was not whether existing corporate charters survived independence — they did — but what authority would issue new charters going forward and on what terms. The Articles of Confederation, ratified in 1781, supplied no general federal chartering authority. The Constitution of 1789 likewise gave Congress no express power to incorporate. The state legislatures, which retained their colonial chartering authority and which after independence were not constrained by Parliament's prohibitions, became the principal source of new corporate charters in the post-Revolution American economy.

The first significant test of federal chartering authority came almost immediately. Alexander Hamilton, appointed Secretary of the Treasury in September 1789, faced the financial problem the war had produced — federal and state war debts totaling approximately $77 million carried at varying rates of interest, a chaotic state-paper currency, no central depository for federal funds, and a federal revenue system not yet operationally established. Hamilton's response, set out in his *Report on a National Bank* of December 13, 1790, was modeled on the Bank of England's charter of 1694. He proposed a federally chartered Bank of the United States, capitalized at $10 million (with $2 million from the federal government and $8 million from private subscription), authorized to issue banknotes, serve as a depository for federal funds, manage federal fiscal operations, and conduct commercial banking business. The Bank would receive a twenty-year monopoly on federal banking charters.

The constitutional debate the proposal produced has been examined in the American legal literature so thoroughly that the case here can be brief. Hamilton argued that the Constitution's grant to Congress of the powers "necessary and proper" to execute its enumerated powers (Article I, Section 8, Clause 18) authorized the chartering of a bank as a means of executing the enumerated powers of taxation, borrowing, regulating commerce, and managing the federal property. Thomas Jefferson, then Secretary of State, argued in his February 15, 1791 opinion to Washington that the chartering of corporations was not among the enumerated federal powers, that the "necessary and proper" clause did not extend federal power beyond what was strictly necessary to execute the enumerated powers, and that "to take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power." James Madison made parallel arguments in the House. Hamilton's *Opinion on*

the Constitutionality of a National Bank, submitted to Washington on February 23, 1791, replied that the federal government must be understood to possess implied powers necessary to the effective conduct of its assigned responsibilities, that the chartering of a bank fell within the implied powers reasonably necessary to the fiscal and commercial purposes the Constitution had assigned the federal government, and that any narrower reading would seriously disable the federal government from conducting the operations the Constitution required of it. Washington signed the bill into law on February 25, 1791. The First Bank of the United States opened in Philadelphia on December 12, 1791 with a twenty-year charter. Branches followed in Boston, New York, Charleston, and Baltimore in 1792, and later in Norfolk, Savannah, Washington, and New Orleans across the following decade.

The Bank operated across the full twenty-year period of its charter. Its capital structure — federal participation of twenty percent and private participation of eighty percent — combined the operational features of the Bank of England's public-private mixed structure with the federal-state political arrangements of the new American constitutional system. Its share price rose steadily across the 1790s as the Bank's profitability and operational success became visible. Its renewal in 1811 was contested politically: Jeffersonian Republicans who had opposed the original chartering pressed for non-renewal; Federalist commercial interests pressed for renewal; the renewal vote in Congress was extremely close (a tie in the Senate, broken against renewal by the Vice-President's vote); and the Bank's charter lapsed in March 1811. The War of 1812 produced fiscal problems the absence of a central bank gravely complicated — the federal government's borrowing operations across the war became chaotic, and the multiplying state banks issued paper that depreciated sharply against

specie — and Congress in 1816 chartered a Second Bank of the United States on essentially the same terms as the First. Madison, who had opposed the First Bank's constitutionality in 1791, signed the Second Bank's charter in 1816, explaining later that the constitutional question had been settled by "deliberate and reiterated precedents" — the long acceptance of the First Bank had, in his view, established the federal chartering authority that the original constitutional text had not specifically supplied.

The federal chartering debate, important as it was for the constitutional development, was a small component of the broader American corporate-chartering activity across the 1790s and the following decades. The state legislatures conducted the principal work. Robert Wright's research has documented 319 business corporations chartered in the United States across the 1790s alone — more than the entire European total for the same decade. The number of state-chartered banks rose from 1 in 1783 (the Bank of North America, chartered by Pennsylvania in 1781 and re-chartered by Congress under the Articles of Confederation) to 266 in 1820, 702 in 1840, and 1,371 in 1860. State legislatures chartered turnpike companies (New York alone moved from 1,000 miles of turnpike in 1810 to 4,000 miles by 1820, mostly under turnpike-company charters), bridge companies, canal companies (the Erie Canal, conducted under New York state authority and operating commencement in 1825, was the most consequential of the canal projects but was part of a much larger network), insurance companies (marine and fire insurance across the major commercial cities, life insurance developing somewhat later), water-supply companies (the Manhattan Company, chartered by New York in 1799 ostensibly for water supply but used by Aaron Burr to establish a bank that became the predecessor of today's JPMorgan Chase), and the broader range of state-chartered ventures that supplied the institutional

infrastructure of the early American commercial economy.

The total figure that Wright and his collaborators have produced for the entire pre-1860 period — 22,419 business corporations chartered by state legislatures under special legislative acts between 1790 and 1860, plus several thousand more under the general incorporation statutes that began to appear in the 1840s and 1850s — exceeded the corresponding figures for any other national economy by what appears to be an order of magnitude. The United States by the middle of the nineteenth century had chartered more business corporations than the rest of the world combined. The American chartering practice that this part has tracked from its colonial origins through the post-Revolution multiplication had produced, by the eve of the Civil War, the institutional reality the present case is required to track.

The structural features of the early American chartering practice deserve specification because several of them established patterns the subsequent American corporate development would carry forward. State legislative chartering operated on a case-by-case basis through most of the period before 1840: each new corporation required a specific act of the state legislature, conducted through the same procedural channels as other legislation. The legislative chartering process was politically contested across the period: charters were sought, lobbied for, sometimes purchased through influence or outright bribery, and frequently shaped by political patronage. The competition among state legislatures to attract corporate formation produced, across the period and increasingly across the nineteenth century, what would later be called a "race to the bottom" in chartering terms — state legislatures relaxed restrictions on chartered corporations to attract incorporations away from competing states. The shift to general incorporation statutes, beginning with New York's 1811 general

incorporation act for manufacturing corporations and gradually extending to other corporate purposes across the following decades, replaced the case-by-case legislative chartering with administrative procedures that allowed any qualified group of incorporators to obtain a charter as of right under specified statutory conditions. The shift removed corporate formation from direct legislative supervision and transferred it to the administrative practice that the modern American corporation operates within.

The institutional residue the American chartering boom of the 1790s and following decades accumulated was the operating infrastructure for what was rapidly becoming the world's most dynamic commercial economy. The banks supplied the credit; the turnpike, canal, and (shortly) the railroad corporations supplied the transportation infrastructure; the insurance corporations supplied the risk-management mechanisms commerce required; the manufacturing corporations supplied the industrial capacity that the early-nineteenth-century American industrial revolution would develop. The institutional accomplishments were considerable. The institutional pathologies — speculative bubbles in 1819, 1837, and 1857; political corruption around the chartering process; the broader range of commercial abuses the chartered form made possible at scale — were equally considerable. The reader registers both because the record contains both.

Six — *Dartmouth College v. Woodward*, 1819

The constitutional moment that consolidated the early American corporate form was the United States Supreme Court's decision in *Trustees of Dartmouth College v. Woodward* (17 U.S. 518), handed down by Chief Justice John Marshall on February 2, 1819. The case arose from an intra-institutional dispute at Dartmouth College and from the New Hampshire legislature's attempt to resolve the dispute by altering the College's colonial charter. Marshall's opinion held that the charter was a contract within the meaning of Article I, Section 10 of the federal Constitution (which prohibits state laws "impairing the Obligation of Contracts"), that the New Hampshire legislature could not unilaterally alter the charter without the consent of the College's trustees, and that the College was a private rather than a public corporation entitled to constitutional protection from legislative interference. The doctrine the opinion established became the foundational American constitutional protection for corporate charters and shaped the subsequent development of American corporate law across the nineteenth century and beyond.

The institutional background lies in the late colonial chartering of Dartmouth that section three of this part examined. Eleazar Wheelock, the Congregational minister who had founded an "Indian Charity School" at Lebanon, Connecticut in 1754, had succeeded in raising approximately £10,000 in England and Scotland for the school's endowment through a fund-raising tour conducted in 1766–1767 by Samson Occom (a Mohegan Presbyterian minister who became the first Native American to publish in English) and Nathaniel Whitaker. The British Board of Trustees overseeing the fund was chaired by the Earl of Dartmouth. Wheelock proposed to move the school to a new site at Hanover, New Hampshire, and elevate it to collegiate status; he secured

a royal charter from George III on December 13, 1769, establishing "the Trustees of Dartmouth College" as a self-perpetuating board of twelve trustees with the standard chartered-corporation powers. The College opened at Hanover in 1770. Wheelock served as its first president until his death in 1779, when he was succeeded by his son John Wheelock.

The intra-institutional dispute that produced the litigation developed across the early nineteenth century. John Wheelock, who served as president from 1779, came into conflict with the trustees across the 1810s over questions of college governance, religious orientation, and the relative authority of the president and the board. The conflict had political dimensions that paralleled the broader Federalist-Republican division of the period: Wheelock was associated with Republican views, the trustees with Federalist; Wheelock's clerical orientation favored the more Presbyterian-leaning evangelical revivalist tradition of the early nineteenth century, the trustees favored the older Congregational orthodoxy. The trustees deposed Wheelock from the presidency on August 26, 1815. Wheelock appealed to the New Hampshire legislature, then under Republican control, for legislative intervention.

The New Hampshire legislature responded across 1816 with three statutes that effectively recast the College's chartered structure. The first statute, passed June 27, 1816, renamed the College "Dartmouth University," increased the board of trustees from twelve to twenty-one, and created a board of overseers (twenty-five members appointed by the governor) with veto power over trustee actions. The second statute imposed penalties on persons who continued to operate the institution under its original chartered structure. The third statute regulated the operation of the new University and provided for the transfer of the College's property, records, and corporate seal to the new governance

arrangement. William Woodward, who had been the College's secretary and treasurer under the original trustees, sided with the legislative restructuring and transferred to the new University, carrying with him the corporate seal, the records, and other corporate property.

The original trustees sued Woodward in the New Hampshire state courts for return of the corporate property. The case turned on whether the legislative restructuring had been constitutionally valid. The trustees argued that the 1769 charter was a contract between the College and the Crown (which had been succeeded after independence by the State of New Hampshire), that the contract clause of the federal Constitution prohibited state laws impairing such contracts, and that the legislative restructuring was therefore unconstitutional and void. Woodward and the state argued that the College was a public corporation subject to legislative supervision, that the charter was not the kind of contract the framers had intended the contract clause to protect, and that the legislative restructuring served public purposes that the state retained authority to pursue. The New Hampshire Superior Court ruled for Woodward on November 6, 1817; the College was, in that court's view, a public corporation whose chartered structure the state legislature could modify in service of public purposes.

The trustees appealed to the United States Supreme Court. Daniel Webster, the leading American constitutional advocate of the period and a Dartmouth alumnus of the class of 1801, represented the trustees on appeal. Webster argued the case across two days in March 1818. His argument combined doctrinal analysis of the contract clause's reach with extended appeals to the importance of educational institutions and the principle of corporate-charter inviolability. His peroration — addressed to Marshall directly — became one of the celebrated moments of the early American legal practice: "It is, sir, as I have said,

a small college. And yet there are those who love it." The reported response in the courtroom, which several observers recorded, included visible reactions among the justices. Marshall reserved decision; the Court did not hand down its opinion that term; reargument was conducted across the following year as the Court took further submissions on the constitutional questions.

Marshall delivered the Court's opinion on February 2, 1819. The opinion held, by a vote of five justices to one (Justice Duvall dissenting without opinion), that the 1769 charter was a contract within the meaning of the contract clause, that the contract clause protected private corporate charters from impairment by state legislative action, that Dartmouth College was a private rather than a public corporation, and that the 1816 New Hampshire statutes were unconstitutional and void.

The reasoning incorporated three lines of argument the case for the trustees had developed. First, on the question of whether the chartered corporation was a person capable of holding rights under the contract clause, Marshall reached back to the corporate-personality doctrine the canon-law and English common-law tradition had developed. "A corporation," Marshall wrote, "is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual." The doctrinal language ran in a direct line of descent from Coke's articulation in *Sutton's Hospital* — "invisible, immortal, & resteth only

in intendment and consideration of the Law" — and through Coke from the canon-law tradition Innocent IV had consolidated nearly six centuries earlier. The doctrinal chain the present case has been tracing through Part I had reached the United States Supreme Court intact.

Second, on the question of whether the corporate charter was a contract, Marshall acknowledged that the framers of the Constitution had probably not had corporate charters specifically in view when drafting the contract clause. "It is more than possible," he conceded, "that the preservation of rights of this description was not particularly in the view of the framers of the constitution, when the clause under consideration was introduced into that instrument." But the clause's general protection of contractual obligations admitted no specific carve-out for the corporate-charter case, and the analytical question was whether the chartered relationship between the state and the corporation was inherently contractual in character. Marshall held that it was. The charter was a grant from the state to the trustees of specified rights and obligations; the trustees had accepted the grant and undertaken the operations the charter contemplated; the relationship had been mutual and onerous in character, with consideration flowing from both sides; and the relationship was therefore a contract within the doctrinal meaning the clause employed.

Third, on the question of whether the corporation was public or private, Marshall acknowledged that the College had been founded for educational purposes that served public benefit, but he distinguished between corporations established for public purposes and corporations that were themselves agencies of the state. Dartmouth's funding had come principally from private donations rather than from public appropriations; its trustees were a self-perpetuating private body rather than legislative or executive appointees; its operations were directed by

the trustees rather than by state officials; and its institutional life was therefore that of a private corporation rather than that of a state agency. The fact that the College served public purposes did not convert it into a public corporation; the relevant test was the source of its capital and the locus of its governance, both of which on the Court's analysis were private.

The combined holding produced the constitutional protection of corporate charters from state legislative interference that became, across the following century, one of the principal constitutional foundations of American corporate development. State legislatures could grant charters, and after the Court's decision in *Stone v. Mississippi* (1880) the Court would carve out exceptions to permit states to modify charters where state police powers required, but the general rule that a state could not unilaterally alter a corporate charter once granted remained the constitutional baseline across the nineteenth century. The protection of corporate charters as constitutionally inviolable contracts encouraged the rapid expansion of state-level corporate chartering that the previous section examined; investors and incorporators could rely on the chartered terms of their corporations remaining stable across the operating life of the entity; the federal courts stood ready to enforce the chartered terms against subsequent state legislative interference.

Marshall was not designing the modern American corporation. He was deciding a specific dispute between the deposed president of a small New Hampshire college and the state legislature that had attempted to resolve the dispute by restructuring the college's chartered governance. The doctrinal materials he reached for in the opinion — the corporate-personality doctrine that ran back through Blackstone and Coke to the canon-law tradition Innocent IV had consolidated, the contract clause that the framers had drafted with different concerns in

view, the public-private distinction that Blackstone and the eighteenth-century English commentators had developed — were the materials available in the American legal-doctrinal inheritance of 1819. The opinion he produced supplied the constitutional foundation that the subsequent American corporate development would build upon. Each subsequent moment in the American corporate development would inherit what Marshall had set down. Part III handles the period from 1819 through the close of the nineteenth century — the railroad corporations and their political and constitutional development, the constitutional extension of personhood to corporations through the Fourteenth Amendment cases of the 1870s and 1880s, the antitrust response of the late nineteenth century, and the regulatory framework the Progressive era would shortly produce.

Part III — The Industrial Transformation, 1819 – c. 1914

Thomas J. Bryan with Claude (Anthropic) · 2026

The constitutional foundation that John Marshall's *Dartmouth College* opinion supplied in February 1819 was the institutional residue the early American republic transmitted to the generations that would shortly remake the American economy. The chartered-corporation form was protected from state legislative interference, the rights of corporate charters were treated as contractual obligations the federal courts would enforce, and the state legislatures retained the chartering authority that the post-Revolution constitutional settlement had assigned them. The form was operationally available. What the generation that inherited it would do with it across the next ninety-five years was build the institutional infrastructure of the most consequential industrial transformation in human history to that point — railroad networks spanning a continent, manufacturing concentrations producing at scales no prior economy had achieved, financial structures pooling capital in quantities that exceeded the resources of any prior national economy, and the operational machinery of the modern corporate economy that the twentieth century would inherit.

Part III tracks the corporate form across the nineteenth century into the early twentieth. The opening section examines the antebellum proliferation — the multiplication of state-chartered corporations across the 1820s through the 1850s, the shift from special legislative chartering to general incorporation statutes, and the institutional innovations the period produced. The second section turns to the railroad corporations and the federal land-grant regime that the Pacific

Railroad Acts of 1862 institutionalized — the operational scale these corporations achieved, the financial mechanisms they pioneered, and the corruption that emerged from the close institutional integration between the railroad corporations and the federal government. The third section examines the post-Civil War concentration of American industry through the trust device — Standard Oil's organization of the oil-refining business in 1882, the proliferation of trusts across other industries through the 1880s, and the institutional response the trust device provoked. The fourth section follows the Sherman Antitrust Act of 1890 and the legislative response, the New Jersey enabling legislation of 1888 and 1889 that produced the holding company as the institutional alternative to the trust, and Delaware's subsequent adoption of the same general-incorporation pattern in 1899. The fifth section examines *Santa Clara County v. Southern Pacific Railroad* in 1886 and the constitutional consolidation of corporate personhood under the Fourteenth Amendment — a doctrinal extension that proceeded through a court reporter's headnote rather than through any explicit holding by the Court. The closing section follows the great merger wave of 1895–1904, Theodore Roosevelt's trust-busting under the Sherman Act, the 1911 dissolution of Standard Oil, and the early-Progressive regulatory framework the period produced.

The institutional accomplishments of the corporate form across the period were extraordinary. The American railroad network grew from approximately 9,000 miles of track in 1850 to approximately 250,000 miles by 1914 — built principally through chartered corporations under varying combinations of state and federal authorization. American industrial output rose from roughly fifteen percent of British output in 1860 to roughly two-and-a-half times British output by 1914. The operational scale of American manufacturing, refining, mining, and transportation concentrated through corporate structures at levels no

prior economy had achieved. The institutional pathologies were equally extraordinary. The corruption around the railroad chartering and land-grant regime produced what contemporaries called the "Great Barbecue" of the post-Civil War decades. The trust device produced concentrations of economic power that progressive critics across the late nineteenth century found incompatible with the political assumptions of a republican society. The institutional infrastructure of late-nineteenth-century American politics — campaign contributions, patronage relationships, regulatory capture, the rotating personnel between corporate boardrooms and federal regulatory bodies — accumulated across the period and would not be seriously addressed until the early-twentieth-century Progressive reforms that the period's closing section examines. Both registers are present in the historical record. The case carries both forward.

One — The Antebellum Proliferation

The constitutional protection that *Dartmouth College v. Woodward* established encouraged the state-level chartering boom that the post-Revolution American economy had been generating for a generation. Investors and incorporators could rely, after 1819, on the chartered terms of their corporations remaining stable across the operating life of the entity. State legislatures could grant charters with confidence that the chartered relationship would be enforceable against subsequent legislative reconsideration. Subsequent corporations could be designed with confidence that the doctrinal machinery the federal courts had supplied would protect the chartered entity against state-level political pressure that might otherwise attempt to alter the terms after the entity had been established.

The chartering activity multiplied across the 1820s, 1830s, and 1840s. The state-chartered banks grew from approximately 266 in 1820 to 702 by 1840 and to 1,371 by 1860. The turnpike corporations chartered in the early nineteenth century to build the inland transportation network became the dominant institutional vehicle for road-building across the period — New York alone, as Part II observed, expanded from roughly 1,000 miles of chartered turnpike in 1810 to roughly 4,000 miles by 1820, and the pattern continued across the following decades. The bridge corporations and canal corporations followed the same pattern. Insurance corporations — marine insurance principally in the early nineteenth century, fire insurance and life insurance multiplying across the 1830s and 1840s — supplied institutional vehicles for the risk-management functions a more developed commercial economy required. The manufacturing corporations chartered under early state legislation — the Boston Manufacturing Company chartered in Massachusetts in 1813, which built the integrated textile factory at Waltham that supplied the operational template for the broader Massachusetts mill development at Lowell and elsewhere — applied the corporate form to industrial production at scales the partnership-based commercial economy of the colonial and early-republican period could not have organized.

The institutional innovation that emerged across the antebellum period and transformed the chartering process was the general incorporation statute. The case-by-case legislative chartering of the early-republican period was operationally cumbersome — each new corporation required a specific act of the state legislature, conducted through the same procedural channels as other legislation, with the political costs and patronage dimensions that legislative chartering carried. The transition to general incorporation, which began with New York's 1811 act for manufacturing corporations and proceeded across

the following decades through similar statutes in other states, allowed any qualified group of incorporators to obtain a charter as of right under specified statutory conditions. The shift removed corporate formation from direct legislative supervision and transferred it to administrative practice. By the 1850s most states had general incorporation statutes covering at least the principal categories of business corporation — manufacturing, banking, insurance, transportation, mining. The case-by-case legislative chartering continued for some time alongside general incorporation, particularly for corporations with public-purpose features (canal corporations receiving land grants, banks receiving deposit privileges, certain railroad corporations receiving particular subsidies), but the general-incorporation pattern progressively dominated the routine chartering across the period.

The institutional consequences of the shift to general incorporation were considerable. The political costs of obtaining a corporate charter declined. The number of corporations multiplied at rates that the previous case-by-case regime could not have supported. The corporate form became available for purposes that legislative chartering had not specifically contemplated and that the political coalitions necessary for legislative approval would have hesitated to authorize. The standard chartering terms — the structure of corporate governance, the rules for share issuance and shareholder voting, the limitations on corporate purposes, the maximum capital and the duration of the charter — became progressively standardized across the state statutes rather than varying corporation by corporation as the case-by-case legislative chartering had produced. The institutional residue accumulated across the antebellum period was the foundation for what the post-Civil War transformation would build upon.

A handful of corporations across the antebellum period operated at scales that anticipated the post-Civil War development. The Bank of the United States — the Second Bank, chartered by Congress in 1816 and operating from Philadelphia until Andrew Jackson's veto of its re-chartering in 1832 produced the operational collapse that the Panic of 1837 followed — was the largest American corporation of its period and the principal vehicle through which the federal government's fiscal operations were conducted. Nicholas Biddle, the Bank's president from 1822, operated it as a quasi-central-bank that managed currency circulation, federal deposits, and credit conditions across the United States in ways that no subsequent American institution would conduct on a comparable scale until the Federal Reserve System was established in 1913. Jackson's veto of the re-chartering and the subsequent removal of federal deposits to state banks ("the pet banks") inaugurated a period of unstable American currency and banking that would persist until the Civil War's National Banking Act of 1863 and 1864 began to rationalize the institutional structure.

The Erie Canal Corporation, chartered by New York in 1817 and completed in 1825, was the dominant pre-railroad transportation corporation of the early-nineteenth-century American economy and supplied the operational template the subsequent canal corporations would follow. The Lehigh Coal and Navigation Company, chartered by Pennsylvania in 1822, the Delaware and Hudson Canal Company, the Chesapeake and Ohio Canal Company — the broader network of canal corporations chartered across the 1820s and 1830s built the inland-water-transportation infrastructure that connected the Atlantic seaboard to the Ohio Valley and the developing settlements of the upper Midwest. The financial demands of canal construction — long lead times, large initial capital outlays, returns realized only after the operational network was complete — required institutional structures

the older partnership forms could not supply at the scale the projects required. The chartered-corporation form, with its capacity to pool capital from many investors through subscription, to defer returns until the venture matured, and to operate across the lifetimes of individual investors, was the institutional vehicle the canal-building moment required and produced.

The early American railroad corporations followed the canal pattern and shortly exceeded it. The Baltimore and Ohio Railroad, chartered by Maryland on February 28, 1827, was the first commercial railroad chartered in the United States. The Mohawk and Hudson Railroad (chartered by New York in 1826, operations commenced 1831) and the Charleston and Hamburg Rail Road (chartered by South Carolina in 1827, operations commenced 1833) followed in the same period. Across the 1830s and 1840s the network multiplied at extraordinary rates — approximately 23 miles of operating track in the United States in 1830, approximately 2,800 miles by 1840, approximately 9,000 miles by 1850, approximately 30,000 miles by 1860. The state legislatures continued to charter the railroad corporations through specific acts (general incorporation statutes for railroads followed only later in the century), and the political competition among states to attract railroad development produced charters whose terms were progressively more favorable to the investing parties. Federal involvement was limited in the antebellum period — the federal government supplied land grants for some railroad ventures (the Illinois Central Railroad's land grant in 1850 was the first major federal land grant to a railroad corporation), and the federal courts adjudicated some interstate disputes, but the principal authorizing relationships ran between the railroad corporations and the state legislatures across the period.

The institutional residue the antebellum period accumulated and that the post-Civil War transformation would inherit was a deep practice of state-level chartering across a widening range of commercial and industrial purposes, a developing tradition of general incorporation that progressively replaced the case-by-case legislative pattern, a regulatory framework that constrained chartered corporations principally through their charter terms (rather than through subsequent regulatory oversight, which would emerge only later), a doctrinal infrastructure rooted in *Dartmouth College* and the subsequent contract-clause cases that protected chartered terms from state legislative interference, and an institutional culture of corporate organization that the rapidly developing American industrial economy would shortly extend into territory the antebellum period had not specifically anticipated.

Two — The Railroad Corporations and the Land-Grant Regime

The American railroad corporations of the 1850s, 1860s, and 1870s operated at scales and produced consequences that the broader institutional development of the chartered-corporation form had not previously approached. The integrated railroad networks the period built — track, locomotives, rolling stock, terminal facilities, telegraph lines, repair shops, the broader operational infrastructure that integrated continental commerce — required capital deployments and managerial structures that no prior American corporation had organized. The financial markets that emerged in New York and (to a lesser extent) Philadelphia and Boston across the period to fund the railroad construction transformed American capital markets and produced the institutional residue from which the post-Civil War financial system would develop. The political relationships the railroad corporations developed with federal and state authorities across the period produced both the institutional infrastructure of the modern American regulatory state and the political pathologies that the post-Civil War decades came to be known for.

The pre-Civil War railroad development had been principally state-authorized. The Baltimore and Ohio, the New York Central (consolidated by Cornelius Vanderbilt from earlier corporations in 1853), the Pennsylvania Railroad (chartered 1846, expanded across the 1850s), the Erie Railroad (chartered 1832, completed to Lake Erie in 1851), and the other major eastern trunk lines were chartered by state legislatures, financed principally through state-authorized share issuance and bond sales, and operated under state regulatory frameworks (where any regulatory framework existed). State and local subsidies were considerable — municipalities along proposed railroad

routes commonly subscribed to bond issues to attract railroad construction through their jurisdictions, and several states extended land grants from their public domains to the corporations operating within their boundaries. By 1860 approximately fifty million acres of state-granted land had been transferred to railroad corporations across the various states.

The federal role expanded sharply with the Pacific Railroad Acts of 1862 and 1864. The political circumstances combined the Civil War's strategic concerns with the longer-running ambitions for a transcontinental railroad that the 1850s had not been able to advance through Congress (sectional disputes over the route — northern versus southern — had blocked legislative action across the late antebellum period). The 1862 Act, signed by Abraham Lincoln on July 1, chartered the Union Pacific Railroad to build west from Council Bluffs, Iowa, and authorized the existing Central Pacific Railroad (chartered by California in 1861) to build east from Sacramento. The two corporations would meet at a point in the western interior, completing the first transcontinental rail line. The Act provided federal subsidies in two principal forms — government bonds at six percent interest, issued to the corporations at rates per mile of completed track that varied by terrain ($16,000 per mile on flat terrain, $32,000 in the high plains, $48,000 in the mountains), and federal land grants of ten alternating sections per mile of track (twenty sections per mile after the 1864 amending Act doubled the grant), drawn from the public domain along the constructed route.

The Pacific Railroad Acts of 1862 and 1864, together with the supplementary land-grant legislation passed across the following decade, transferred approximately 130 million acres of federal public land to railroad corporations across the period 1850–1871. The state

governments added approximately fifty million acres of state-granted land. The total railroad land grants of approximately 175 million acres exceeded the area of Texas and constituted roughly ten percent of the United States by area. The grants went principally to a small number of large corporations — the Union Pacific, the Central Pacific (later the Southern Pacific), the Northern Pacific (chartered by Congress in 1864, completed to Puget Sound in 1883), the Atchison, Topeka and Santa Fe (chartered by Kansas in 1859, expanded across the post-war decades), the various railroads of the Mississippi Valley and the Gulf South. The Northern Pacific alone received approximately forty million acres, an area roughly the size of New England. The land grants produced both the operational infrastructure of the post-war American west — the railroad-corporation-led settlement promotion that brought European and American settlers to the prairie and mountain west across the 1870s and 1880s, the corporation-promoted town sites along the rail routes, the agricultural production that the railroads supplied to eastern and European markets — and the political pathologies that the land-grant regime came to be known for. The corporate land sales conducted under varying market conditions across the post-war decades sometimes produced sizable returns for the corporations and considerable dislocations for the settlers, indigenous populations, and competing land-claimants whose interests intersected with the corporate land position. The legal disputes over the grant terms continued through the courts across the late nineteenth century and the early twentieth.

The financial mechanisms the railroad corporations developed across the period transformed American capital markets. The construction of railroad networks required capital at scales no prior American corporation had raised. The Union Pacific's authorized capital under the 1862 Act was one hundred million dollars; the Central Pacific's was somewhat less; the Northern Pacific's and the Santa Fe's

were comparable. The mechanisms through which the capital was raised — share issuance in domestic and foreign markets, bond issuance secured by the railroad's land grants and operating revenues, the broader range of financial-instrument arrangements that the railroad corporations and their bankers developed — built the operational infrastructure of what would become the modern American capital market. The New York Stock Exchange, which had operated in various forms since the Buttonwood Agreement of 1792, became the principal market for American railroad securities across the post-Civil War decades, and the volume of railroad-security trading drove the Exchange's growth from a small specialized market into the world's largest. The investment banking houses that emerged across the same period — J.P. Morgan & Co. (organized in 1871 from the earlier firms in which Morgan had operated since the 1850s), Kuhn, Loeb & Co. (founded 1867), the broader network of investment banks at New York and the secondary financial centers — built their operational practice principally around the syndication and placement of railroad securities.

The institutional pathology that the railroad-corporation system produced was visible across the post-war decades in patterns the Credit Mobilier scandal of 1872 illustrated at high resolution. The Credit Mobilier of America had been organized in 1864 by Thomas Durant, then a vice president of the Union Pacific, by acquiring an existing chartered corporation (the Pennsylvania Fiscal Agency) and renaming it. The new corporation's nominal purpose was to conduct the construction of the Union Pacific's track; its actual function was to allow the Union Pacific's controlling shareholders to capture the construction profits the railroad's federal subsidies and stockholder capital would produce. The mechanism was operationally straightforward. The Credit Mobilier contracted with the Union Pacific to build the railroad at prices that materially exceeded the actual

construction costs. The Union Pacific paid the Credit Mobilier the contracted amounts (drawing on federal subsidies and on capital raised from Union Pacific shareholders). The Credit Mobilier built the railroad at the lower actual costs. The difference — approximately $44 million between the $94 million the Union Pacific paid and the $50 million the construction actually cost, on the principal contemporary accounting — flowed to the Credit Mobilier as profit, which was distributed to its shareholders, who were largely the same persons as the Union Pacific's controlling shareholders. The arrangement allowed the controlling group to capture the federal subsidies and stockholder capital that the Union Pacific was receiving, while leaving the Union Pacific itself with operational obligations and accumulated debts that subsequently embarrassed its long-term financial position.

The political dimension of the Credit Mobilier arrangement emerged when Oakes Ames, a Massachusetts congressman who had become the Credit Mobilier's principal organizer after his brother Oliver Ames replaced Durant as Union Pacific president in 1867, distributed Credit Mobilier shares at par value to roughly a dozen Senators and Representatives in 1867 and 1868. The shares were trading on the secondary market at considerably higher prices because the Credit Mobilier was paying large dividends from the construction profits. The recipients could realize sizable capital gains by accepting the par-value distribution and selling at market — the operational equivalent of a cash bribe distributed through stock options. The recipients included Vice President Schuyler Colfax (then Speaker of the House), Representative James Brooks of New York, future president James Garfield, and other figures whose political support the Union Pacific required. The Speaker of the House at the time of the disclosure, James Blaine, had declined Ames's offer but found his name dragged through the press anyway when the New York Sun broke the story on September 4, 1872, on the

front page of its election-season edition. The House investigation that followed, conducted by a select committee chaired by Representative Luke Poland of Vermont across the winter of 1872–1873, censured Ames and Brooks on February 27, 1873; Ames died in May 1873; the broader political fallout damaged the Grant administration and contributed to the political shift the mid-1870s produced.

The Credit Mobilier was a particular case rather than an outlier. The post-Civil War railroad-construction period produced similar (if less extensively documented) arrangements across the broader network of federally and state-supported railroad ventures. The basic pattern — controlling shareholders capturing construction profits through interposed construction companies, distributing political support through stock arrangements that were profitable on their face, operating the underlying railroad with diminished resources and increased long-term obligations — became the operational template the corporate-organizational practice of the period developed. The institutional infrastructure of late-nineteenth-century American politics — the campaign contributions, the patronage relationships, the rotating personnel between corporate boardrooms and federal regulatory bodies — accumulated through the corporate-political relationships the railroad period established.

The longer-term institutional consequences of the railroad period for American corporate development were considerable in three principal respects. First, the railroad corporations supplied the operational model for what large American corporations could be — managerial structures that operated continental networks, financial structures that pooled capital at unprecedented scales, accounting systems that tracked operations across multiple states and regions, the broader range of organizational practices that the subsequent industrial corporations

would inherit. Second, the railroad-corporation political relationships established the template for what would shortly become the dominant pattern of late-nineteenth-century American political economy — close institutional integration between major corporations and federal and state regulatory authorities, with all the pathologies and conveniences that such integration produced. Third, the public reaction to the railroad-corporation period's pathologies — the agrarian protest movements (the Grange of the 1870s, the Populist movement of the 1890s), the urban reform pressures that emerged across the late nineteenth century, the eventual federal regulatory framework that the Interstate Commerce Act of 1887 began to construct — produced the political coalitions that the Progressive era would mobilize for the regulatory response the period's closing section examines.

Three — The Trust Device and the Concentration of Industry, 1880s

The post-Civil War American economy produced industrial concentrations at scales that the antebellum chartered-corporation framework had not specifically anticipated. The expansion of national markets that the railroad networks made possible, the technological developments that produced steam-powered manufacturing and the broader range of late-nineteenth-century industrial innovations, the wave of European immigration that supplied labor at scales the prior American economy had not absorbed, the accumulated investment capital that the post-war decades produced — these conditions combined to produce industrial enterprises operating at scales that exceeded what the state-chartered corporation, as it had operated through the antebellum period, was institutionally equipped to handle. The principal operational difficulty was structural: a corporation chartered in one state was constrained in its operations across multiple states by the inherited common-law doctrine that one corporation could not own stock in another. A corporation operating in oil refining or sugar refining or whiskey distilling that wanted to consolidate operations across plants in multiple states faced the problem that the chartered corporation in (say) Ohio could not legally hold stock in a chartered corporation in (say) New York or Pennsylvania.

The institutional innovation that emerged in the 1880s to work around the constraint was the trust device. The Standard Oil Trust, organized by Samuel Dodd, John D. Rockefeller's general counsel, on January 2, 1882, supplied the operational template. Standard Oil had been incorporated in Ohio in 1870 by John D. Rockefeller, William Rockefeller, Henry Flagler, Samuel Andrews, and other partners in a Cleveland oil-refining business. By 1880 the corporation had achieved a

dominant position in American oil refining through a combination of acquisitions, predatory pricing arrangements, and rebate agreements with the railroads that transported crude oil from the Pennsylvania oil fields to the Cleveland and East Coast refineries. Approximately ninety percent of American refining capacity was under Standard Oil control by 1880. But Standard Oil's Ohio incorporation constrained its ability to hold stock in the various subsidiary corporations operating in other states through which the consolidated business operated.

Dodd's solution was the trust. The trust was a separate legal arrangement, drawn from the inheritance trust doctrine that English equity had developed for charitable and family-property purposes. A group of trustees — in the Standard Oil case, the nine principal Standard Oil shareholders (Rockefeller, Flagler, and the others) — held legal title to the shares of all the constituent corporations operating across the various states. The original shareholders of the constituent corporations surrendered their shares to the trustees and received in exchange "trust certificates" representing their proportional interest in the trust's overall holdings. The trustees held the shares, voted them, elected the directors of the constituent corporations, and managed the consolidated operations as a single integrated enterprise. The trust device evaded the chartered-corporation constraint by operating through trust law rather than through corporate law — and by operating through the personal capacities of the trustees rather than through any single chartered entity that would have been subject to the chartering state's regulatory authority.

The Standard Oil Trust's operational consequences were considerable. Standard Oil's share of American refining capacity rose to roughly ninety percent by 1885 and remained in that range across the following two decades. The Trust's operational efficiencies —

economies of scale in refining, coordinated transportation arrangements with the railroads, consolidated purchasing of crude oil and refined-product distribution — reduced refining costs from roughly three cents per gallon in 1870 to less than half a cent per gallon by 1885, and the Trust passed some portion of the cost reductions through to consumers in the form of lower prices for kerosene and the other refined products. The Trust's market power — its capacity to set prices, to negotiate favorable terms with the railroads, to exclude smaller refiners through predatory pricing in selected markets, to acquire competing operations on terms strongly advantageous to the Trust — produced the operational dominance that subsequent critics across the late nineteenth century would identify as among the principal institutional pathologies of the period.

The trust device proliferated across the 1880s. The Sugar Trust (formally the American Sugar Refining Company, organized in 1887 by Henry Havemeyer), the Whiskey Trust (organized in 1887 as the Distillers' and Cattle Feeders' Trust), the Cotton Oil Trust (organized 1884), the Linseed Oil Trust (organized 1885), and several others applied the Standard Oil template across other industries. Each trust consolidated operations across multiple state-chartered corporations through the shared-trustee mechanism, achieved market concentrations approaching or exceeding ninety percent in the principal product lines, and operated as integrated enterprises across the multi-state markets that the railroad networks made operationally possible.

The institutional pathology the trust device produced was visible to contemporary observers. Ida Tarbell, in her *History of the Standard Oil Company* (serialized in *McClure's Magazine* 1902–1904), would write of the Trust that "you could argue its existence from its effects, but you could not prove it" — the legal structure was deliberately opaque, the

operational coordination was conducted through informal channels that left limited documentary trail, and the actual identification of who was making which decisions within the consolidated enterprise was operationally difficult for outside observers (including state regulators, federal officials, and competing businesses) to establish. The trust's market power was visible. The political influence the trust deployed was visible. The actual mechanisms through which the trust operated were comparatively hidden.

Ohio's response to the Standard Oil Trust came in 1892 when the state Supreme Court, in *State ex rel. Watson v. Standard Oil Company*, ordered the Ohio constituent corporation to withdraw from the Trust on the grounds that the participation exceeded the corporation's chartered authority. The judgment was operationally unenforceable in any thorough sense — Standard Oil simply moved its principal operations and corporate-organizational center to other states (eventually consolidating in New Jersey under the holding-company arrangement that the next section examines) — but the Ohio judgment signaled a regulatory hostility to the trust device that paralleled developments in other states and that contributed to the federal legislative response the Sherman Act would shortly produce. New York pursued similar actions against the Sugar Trust across the same period. Several other states enacted antimonopoly legislation across the late 1880s and early 1890s. The trust device, which had supplied the operational solution to the inter-state-chartering constraint across the 1880s, became politically untenable across the early 1890s as state and federal authorities responded to the public hostility the trusts had generated.

Four — The Sherman Act, New Jersey, and the Holding Company

The federal response to the trust phenomenon was the Sherman Antitrust Act of 1890, signed by President Benjamin Harrison on July 2, 1890, after passage by extraordinary majorities in both houses (51-1 in the Senate, 242-0 in the House). The Act's principal operative provisions were brief. Section 1 declared illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." Section 2 made it a misdemeanor for any person to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations." The Act assigned enforcement authority to the federal Department of Justice and provided for civil penalties and dissolution remedies. The legislation was the first major federal foray into the regulation of business combinations and supplied the doctrinal framework that subsequent American antitrust law would develop across the following century.

The Sherman Act's operational effectiveness across its first decade was limited. The Department of Justice across the Harrison and Cleveland administrations conducted comparatively few prosecutions, and the Supreme Court's interpretation of the Act in *United States v. E.C. Knight Company* (1895), which addressed the federal government's challenge to the Sugar Trust's consolidation through the acquisition by American Sugar Refining of four Philadelphia sugar refineries, narrowly limited the Act's reach. Chief Justice Melville Fuller's opinion for the Court held that manufacturing (as distinct from commerce) was not interstate commerce within the meaning of the Act and accordingly that the federal government could not reach

manufacturing combinations through Sherman Act prosecution. The holding sharply constrained the Act's operational reach across the late 1890s and produced the institutional gap that the Roosevelt administration would shortly attempt to close.

The institutional development that proved more consequential across the 1890s than the federal antitrust legislation was the New Jersey enabling legislation that produced the holding company as the operational alternative to the trust. New Jersey had been chartering corporations under increasingly permissive terms since the 1875 state constitutional revision that abolished special legislative chartering and required general incorporation statutes. The 1888 New Jersey legislation, passed on April 17 of that year, authorized New Jersey corporations to merge with other New Jersey corporations and to hold the stock of other corporations under specified conditions. The 1889 legislation, passed on May 9, broadly authorized New Jersey corporations to hold stock in other corporations (whether chartered in New Jersey or in other states), with a vague proviso limiting the held companies to those "owning, mining, manufacturing or producing materials, or other property necessary for [the holding company's] business" — a proviso that the 1893 legislation removed entirely. The 1892 amendments authorized New Jersey corporations to operate outside New Jersey without express permission from New Jersey's legislature. By 1896 the New Jersey corporate code had been consolidated into the operational template that subsequent state corporate legislation would model.

The institutional consequence of the New Jersey enabling legislation was the holding company. A corporation chartered in New Jersey under the 1889 and subsequent legislation could hold the stock of corporations chartered in other states, vote those shares, elect the directors of the

held corporations, and operate them as integrated subsidiaries of the parent corporation. The structural arrangement achieved what the trust device had achieved across the 1880s — consolidated operation of multi-state industrial enterprises through a single controlling entity — but did so within the chartered-corporation framework rather than outside it. The holding company was a corporation under New Jersey law, subject to New Jersey regulatory authority (which was minimal), entitled to the constitutional protections that *Dartmouth College* and the subsequent corporate-personality cases had extended to chartered corporations, and operationally equipped to function across the national market without the trust device's vulnerability to state anti-trust enforcement.

Standard Oil moved to the holding-company structure in 1899. The Standard Oil Trust had been formally dissolved by the Ohio court order of 1892, and operations had continued across the 1890s through informal arrangements among the trustees. The 1899 reorganization established Standard Oil Company (New Jersey) as a New Jersey holding company under the enabling legislation, transferred all assets and interests formerly grouped in the Trust to the New Jersey company, and re-established the consolidated operation in a form that was legally cleaner than the dissolved Trust. The Sugar Trust, the Whiskey Trust, and the other trust-organized industrial combinations followed the same pattern across the 1890s and early 1900s, reorganizing as New Jersey holding companies that achieved the trust-era integration through the new institutional vehicle.

The New Jersey enabling legislation produced what would later be called the chartering competition among states. New Jersey's success in attracting incorporations — the franchise taxes and incorporation fees that the holding-company multiplication produced supplied a

meaningful share of state revenues across the 1890s and 1900s — encouraged other states to follow the New Jersey pattern. Delaware enacted its General Corporation Law in 1899, modeled essentially on the New Jersey legislation, and across the following decades expanded its corporate-law infrastructure (the Court of Chancery developing the body of case law that would establish Delaware as the preeminent corporate jurisdiction, the legislature progressively refining the statutory framework, the broader institutional commitments that Delaware made to the chartering business across the early twentieth century) into the dominant American corporate-law jurisdiction it would shortly become. West Virginia, Maine, New York, and several other states enacted similar enabling legislation across the same period. The "race to the bottom" — or, more neutrally, the chartering competition — that subsequent American corporate-law scholarship would debate had been established by the early twentieth century as the dominant institutional feature of the American chartering practice.

The institutional residue the New Jersey enabling legislation accumulated and that the twentieth-century American corporate development would inherit was an institutional vehicle (the multi-state holding company) capable of consolidating industrial operations at continental scale, a chartering competition among states that progressively reduced the regulatory constraints chartered corporations operated under, a Delaware corporate-law jurisdiction whose dominance in the chartering of large American corporations was established before 1920 and has persisted to the present day, and a structural mismatch between the regulatory authority of the chartering states (which had diminished as the chartering competition proceeded) and the operational reach of the corporations being chartered (which extended across the continental market). The mismatch would supply the structural problem that the twentieth-century federal regulatory state

would attempt to address through the federal regulatory framework that the New Deal and subsequent legislation constructed. Part IV handles that period.

Five — *Santa Clara County v. Southern Pacific* and Corporate Personhood

The constitutional development that paralleled the New Jersey enabling legislation across the 1880s was the doctrinal extension of constitutional personhood to corporations under the Fourteenth Amendment. The Fourteenth Amendment, ratified in 1868, had been drafted principally to extend constitutional protections to the freed enslaved population of the post-Civil War South. Section 1 prohibited any state from depriving "any person of life, liberty, or property, without due process of law" and from denying "to any person within its jurisdiction the equal protection of the laws." The language of "person" was the term the framers had reached for to cover the broadest class of natural persons whose protection the Amendment required. The application of that language to corporations was not specifically addressed in the framing record, and the question of whether corporations were "persons" within the meaning of the Amendment remained doctrinally open across the first two decades after ratification.

The case that became the doctrinal anchor for corporate personhood under the Fourteenth Amendment was *Santa Clara County v. Southern Pacific Railroad Company* (118 U.S. 394), decided by the Supreme Court on May 10, 1886. The case was a tax dispute. California's constitution of 1879 (revised under populist pressure during a period of agrarian protest against the dominant Southern Pacific Railroad) had established a state Board of Equalization to assess railroad property for state tax purposes, and the Constitution and supporting legislation

provided that railroad properties could not deduct mortgage debt from assessed values in computing the taxable base — a treatment that differed from the rules applicable to other corporations and to natural persons. The Southern Pacific and the Central Pacific Railroad Companies refused to pay the resulting tax assessments on the grounds that the state's differential treatment of railroad properties violated the Fourteenth Amendment's equal protection clause. The Santa Clara County tax collector sued for the unpaid taxes. The federal Circuit Court for the District of California ruled for the railroads. The county appealed to the United States Supreme Court.

The case was argued before the Supreme Court on January 26–29, 1886. The principal arguments addressed several distinct questions: whether the corporations were "persons" within the meaning of the Fourteenth Amendment's equal protection clause, whether the California tax assessments violated that clause if the corporations were persons, whether fences along railroad rights-of-way should have been assessed by the state Board of Equalization or by local county authorities, and several subsidiary questions about the procedural and evidentiary disposition of the assessments. The Court's opinion, delivered by Justice John Marshall Harlan on May 10, 1886, decided the case on the narrow ground that the fences had been improperly included in the state Board's assessment because they should have been assessed by the local county authorities, and that the inclusion rendered the entire assessment unrecoverable. The opinion did not address the constitutional question of whether corporations were persons within the meaning of the Fourteenth Amendment.

The doctrinal extension that the case became famous for was not in the opinion but in the headnote. Before oral argument began, Chief Justice Morrison Waite had stated from the bench: "The court does not

wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a state to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does." The remark was directed to counsel — an instruction not to argue the question because the Court had already decided how it would resolve. The remark was not part of any judicial opinion, was not the holding of any case before the Court, and could not have functioned as binding precedent under the conventional understanding of how Supreme Court decisions establish doctrine.

The case's Reporter of Decisions, J.C. Bancroft Davis, recorded Waite's pre-argument remark in the headnote that introduced the *Santa Clara* opinion in the official *United States Reports*. Davis was an interesting figure to be writing the headnote: he had served before his appointment as Reporter as the president of the Newburgh and New York Railway Company. Before publication Davis wrote to Chief Justice Waite on May 26, 1886, to confirm that the headnote accurately reflected what Waite had said. Waite replied: "I think your mem. in the California Railroad Tax cases expresses with sufficient accuracy what was said before the argument began. I leave it with you to determine whether anything need be said about it in the report inasmuch as we avoided meeting the constitutional question in the decision." The exchange has been preserved in the Waite papers and was first identified in the modern scholarly literature by C. Peter Magrath in his 1963 biography of Waite. The Chief Justice's reply was acknowledging that the Court had "avoided meeting the constitutional question" in the actual decision but was leaving it to Davis whether to include the pre-argument remark in the published report. Davis included it.

The headnote, with its declaration that "the defendant Corporations are persons within the intent of the clause in section 1 of the Fourteenth Amendment to the Constitution of the United States," became the cited doctrinal authority for the proposition that corporations are persons under the Equal Protection Clause. Subsequent Supreme Court decisions across the late 1880s and 1890s cited *Santa Clara* as authority for the doctrine. *Pembina Consolidated Silver Mining Co. v. Pennsylvania* (1888), *Minneapolis & St. Louis Railway Company v. Beckwith* (1889) (in which Justice Stephen Field, who had been on the Court for the *Santa Clara* decision, cited *Santa Clara* explicitly), and the broader range of late-nineteenth-century cases progressively built the corporate-personhood doctrine on the *Santa Clara* foundation. By the early twentieth century the doctrine that corporations were "persons" within the meaning of the Fourteenth Amendment's Due Process and Equal Protection Clauses had been thoroughly established in American constitutional law, and the *Santa Clara* citation supplied the doctrinal anchor whenever subsequent litigants required authority for the proposition.

The doctrinal pathway by which corporate personhood was established under the Fourteenth Amendment was, in operational terms, unusual. The actual holding of *Santa Clara* did not establish the doctrine. The pre-argument remark by the Chief Justice did not constitute a judicial opinion. The headnote, written by a court reporter who was a former railroad executive, was not the work of the Court. But the headnote, once published in the official reports, supplied the citation that subsequent litigants and judges accepted as authoritative. The case became, in Jack Beatty's phrase, "reporter made law" — a peculiarity of the late-nineteenth-century American legal practice that produced doctrinal extension through editorial reporting rather than through the conventional opinion-and-precedent machinery. The

substance of the doctrine, by the time the headnote pathway had been completed across the late 1880s and 1890s, was indistinguishable from doctrine that would have been established through ordinary judicial reasoning, and subsequent Supreme Court justices (Justice Hugo Black writing in dissent in *Connecticut General Life Insurance Company v. Johnson* in 1938, Chief Justice William Rehnquist writing in dissent in *First National Bank of Boston v. Bellotti* in 1978) would observe that the doctrinal foundation was thinner than the established practice acknowledged. The doctrinal practice continued nonetheless.

The institutional consequences of the corporate-personhood extension were considerable. Corporations could invoke the Fourteenth Amendment's Due Process and Equal Protection Clauses against state regulatory action. The federal courts could entertain corporate challenges to state regulation that natural persons might not have been positioned to bring. The Lochner-era jurisprudence of the late nineteenth and early twentieth centuries — the line of cases in which the Supreme Court struck down state regulatory legislation under what came to be called substantive due process — proceeded principally through corporate plaintiffs invoking the Fourteenth Amendment protections that *Santa Clara* had supplied. *Lochner v. New York* (1905) struck down the New York maximum-hours law for bakers as a Fourteenth Amendment due process violation; *Adair v. United States* (1908) struck down the federal Erdman Act's prohibition on yellow-dog contracts; *Hammer v. Dagenhart* (1918) struck down the federal Keating-Owen Child Labor Act. The cases were brought by various plaintiffs and rested on multiple doctrinal foundations, but the broader pattern — the use of the Fourteenth Amendment to constrain regulatory action against business interests, including corporate interests — proceeded through the doctrinal infrastructure that the corporate-personhood extension had supplied.

The corporate-personhood doctrine has continued operating across the twentieth and twenty-first centuries through extensions to other constitutional provisions. The First Amendment cases of the modern period — *Buckley v. Valeo* (1976), *First National Bank of Boston v. Bellotti* (1978), *Citizens United v. Federal Election Commission* (2010), *Burwell v. Hobby Lobby Stores* (2014) — have extended constitutional protections to corporations across the speech, religion, and broader range of First Amendment domains in ways that subsequent commentary has connected to the doctrinal foundation that *Santa Clara* supplied. The longer-term institutional consequences of the headnote pathway lie outside what Part III is required to track; the operationally significant point for the present case is that the doctrinal extension by which the chartered corporation was assimilated to constitutional personhood under the Fourteenth Amendment had been completed by the late 1880s, and the foundation for the twentieth-century elaboration of corporate constitutional rights was established before the period the next part will examine.

Six — The Merger Wave, the Trust-Busting, and the Early Regulatory Framework

The combination of the New Jersey enabling legislation, the Sherman Act's limited operational reach across the 1890s, and the corporate-personhood doctrine that the *Santa Clara* headnote pathway had completed produced the institutional conditions for the great merger wave of 1895–1904. American industrial corporations consolidated across the period at rates that no prior or subsequent merger movement in American economic history has approached. Between 1895 and 1904 approximately 1,800 American firms were absorbed into the broader consolidation through approximately 157 multi-firm combinations, principally organized as New Jersey holding companies. The combined enterprises that emerged included the United States Steel Corporation (organized 1901 by J.P. Morgan through consolidation of Carnegie Steel and other firms, capitalized at $1.4 billion and the first American billion-dollar corporation), International Harvester (organized 1902 through consolidation of the principal American agricultural-machinery manufacturers), American Smelting and Refining (1899), American Can (1901), Du Pont (reorganized 1902 from the existing family partnership into a consolidated holding-company structure), and several dozen comparable consolidations across the principal American manufacturing industries.

The institutional consequences of the merger wave were considerable. By 1904 approximately one percent of American industrial firms were producing roughly forty-five percent of total American manufacturing output. Several principal industries — steel, oil, sugar, tobacco, copper, machinery — had concentrated to the point where two or three large firms accounted for the majority of national production. The American economy by 1904 had transformed from the

dispersed industrial structure of the late antebellum period (in which most manufacturing was conducted by small partnerships and proprietary firms) into the concentrated structure of the early twentieth century (in which large publicly traded corporations dominated the major industrial sectors). The institutional concentration was achieved principally through the New Jersey holding-company structure that the late-1880s enabling legislation had supplied.

The federal response across the same period was the trust-busting program that Theodore Roosevelt, who became president on William McKinley's assassination in September 1901, initiated through the Department of Justice. Roosevelt's first major action was the prosecution of the Northern Securities Company under the Sherman Act. The Northern Securities Company had been organized in November 1901 by J.P. Morgan, James J. Hill, and E.H. Harriman as a New Jersey holding company that controlled the Great Northern Railway, the Northern Pacific Railway, and the Chicago, Burlington and Quincy Railroad — the three principal railroad systems connecting Chicago and the Twin Cities to the Pacific Northwest. The arrangement had emerged from an extraordinary stock-market episode in May 1901 (the "Northern Pacific Corner") in which Harriman, working through his Union Pacific interests, had attempted to acquire control of the Northern Pacific through a stock-purchase raid, and Hill and Morgan had countered by accumulating Northern Pacific shares at prices that briefly reached $1,000 per share before the corner was resolved through a negotiated settlement. The negotiated settlement was the Northern Securities Company — a holding company that combined the previously competing interests and operated the three railroad systems as a coordinated network.

Roosevelt's instruction to Attorney General Philander Knox to bring antitrust action against Northern Securities was conducted, in characteristic Roosevelt fashion, without prior consultation with J.P. Morgan or the other affected interests. When Morgan called on Roosevelt in early 1902 to propose a private settlement, Roosevelt declined; Roosevelt later recorded that "Mr. Morgan could not help regarding me as a big rival operator who either intended to ruin all his interests or could be induced to come to an agreement to ruin none." The Justice Department filed suit on March 10, 1902, in the federal circuit court at St. Paul, Minnesota. The circuit court ruled for the government on April 9, 1903. The Supreme Court affirmed on March 14, 1904, by a 5-4 vote in *Northern Securities Co. v. United States* (193 U.S. 197), with Justice John Marshall Harlan writing the principal opinion for the majority. The Court held that the Northern Securities Company's holding-company arrangement constituted a combination in restraint of trade within the meaning of the Sherman Act, that the Act applied to railroad-corporation combinations whether or not those combinations had been formally chartered as holding companies under state law, and that the Court would order the dissolution of the holding-company arrangement notwithstanding the New Jersey chartering. The 1904 decision largely restored the Sherman Act's operational reach that the 1895 *E.C. Knight* decision had narrowed.

The Roosevelt administration prosecuted approximately forty-five antitrust cases across the seven years of Roosevelt's presidency, including major actions against the Beef Trust (1905), the Sugar Trust (1907), and the American Tobacco Company (1908). The Standard Oil prosecution, initiated by Roosevelt in 1906, was completed under President William Howard Taft's administration when the Supreme Court in *Standard Oil Co. of New Jersey v. United States* (221 U.S. 1) on May 15, 1911, ordered the dissolution of the Standard Oil Company

of New Jersey into thirty-three separate corporations. The American Tobacco Company was dissolved in a parallel decision on May 29, 1911, into multiple successor companies. The *Standard Oil* decision was also significant for Chief Justice Edward Douglass White's adoption of the "rule of reason" — the doctrinal interpretation of the Sherman Act under which the Court would distinguish between reasonable and unreasonable restraints of trade and prohibit only the latter — which became the principal interpretive framework for American antitrust law across the following century.

The legislative response that followed the trust-busting period was the Clayton Antitrust Act and the Federal Trade Commission Act, both passed in 1914 under President Woodrow Wilson. The Clayton Act extended the Sherman Act's prohibitions to specific practices (price discrimination, exclusive dealing, mergers that would materially reduce competition) and supplied the doctrinal infrastructure that subsequent American antitrust enforcement would build upon. The Federal Trade Commission Act established the FTC as an independent regulatory agency with authority to investigate and prevent unfair methods of competition. The combination of the two statutes, together with the Sherman Act and the body of federal court doctrine that had developed across the trust-busting period, supplied the regulatory framework that the American corporate economy would operate within across most of the twentieth century.

The broader Progressive-era regulatory framework that emerged across the same period extended the federal regulatory authority across additional dimensions of the American corporate economy. The Pure Food and Drug Act of 1906 and the Meat Inspection Act of 1906 established federal regulatory authority over the consumer products that the integrated national markets had made available across state lines.

The Hepburn Act of 1906 expanded the Interstate Commerce Commission's authority over railroad rates. The Sixteenth Amendment (ratified February 3, 1913) authorized federal income taxation and supplied the revenue mechanism through which the expanding federal regulatory state could be financed. The Federal Reserve Act (December 23, 1913) established the Federal Reserve System and supplied the central-banking institutional structure that the United States had not had since the lapse of the Second Bank's charter in 1836. The Sixteenth and Seventeenth Amendments (the latter, ratified April 8, 1913, providing for direct election of senators) together transformed the federal political structure within which the regulatory framework operated.

The institutional residue the Progressive-era regulatory framework accumulated and that the twentieth century would inherit was a federal regulatory apparatus that operated alongside the state-chartering competition the New Jersey and Delaware legislation had produced. The corporate form would continue to be chartered principally at the state level under the chartering competition. The operational conduct of the corporations would increasingly be regulated through the federal regulatory framework — the FTC, the ICC, the Federal Reserve, the eventual New Deal alphabet agencies (the SEC, the NLRB, the FCC, the various others) that the 1930s would add. The doctrinal foundation that *Dartmouth College* had supplied in 1819 — corporate charters as constitutional contracts, corporations as legal persons under the Constitution, the broader range of doctrinal protections that the federal courts had elaborated across the nineteenth century — would remain in force. The institutional shape of what would shortly be called the American corporate economy was operationally complete by approximately 1914. The remaining institutional development of the twentieth century — the New Deal regulatory framework, the post-war managerial corporation, the late-twentieth-century financialization, the

contemporary patterns the present case will track in Part IV — would proceed within the institutional foundation that the period from 1819 to 1914 had built.

The institutional accomplishments and the institutional pathologies that emerged across the period from 1819 to 1914 sit alongside each other in the historical record. The American railroad network had been built. The continental industrial economy had been organized. The capital markets that financed both had been developed. The institutional infrastructure of what became the world's largest economy across the twentieth century had been built principally through the chartered-corporation form that *Dartmouth* had protected and that the state legislatures and the federal courts had elaborated. The trust-era concentrations had produced industrial output and consumer prices that — on most contemporary economic measures — improved the operational efficiency of the affected industries. The railroad corporations had supplied the operational infrastructure for the agricultural and industrial development of the American interior. The investment opportunities that the corporate form supplied had supported what would shortly be called the broad American middle-class accumulation that the late nineteenth and early twentieth centuries produced.

The institutional pathologies were equally present. The corruption around the railroad chartering and the federal land-grant regime produced the "Great Barbecue" patterns that the Credit Mobilier illustrated and that the broader institutional record of the period documents. The trust-era concentrations produced market structures that critics across the late nineteenth century (Henry Demarest Lloyd's *Wealth Against Commonwealth* in 1894, Ida Tarbell's *History of the Standard Oil Company* in 1902–1904, the broader range of progressive

critique the period produced) registered as among the principal threats to the political assumptions of a republican society. The labor conditions in the integrated industrial corporations — the long hours, the wage levels, the workplace safety conditions, the patterns of labor displacement that the productivity increases had produced — supplied the institutional context within which the labor movements of the late nineteenth and early twentieth centuries developed and within which the early-twentieth-century strikes and labor disputes (the Homestead strike of 1892, the Pullman strike of 1894, the Anthracite Coal strike of 1902, the Ludlow Massacre of 1914) occurred. The political infrastructure that the railroad and trust-era corporations had constructed — the close institutional integration between corporate boardrooms and federal and state regulatory authorities, the campaign contributions and patronage relationships that the period had built — supplied the political environment within which the early-twentieth-century reform movements would shortly operate. Each register of the period sits alongside the others. The reader who has read this far can register them all.

Part IV handles the period from 1914 through approximately 1980 — the institutional transformation that the New Deal supplied, the managerial corporation that emerged in the post-war American economy, the labor-corporate-state arrangement that organized American economic life across the mid-twentieth century, and the institutional pressures that the late-twentieth-century transformation would shortly produce.

Part IV — The Managerial Corporation and the Postwar Accord, c. 1914 – c. 1980

Thomas J. Bryan with Claude (Anthropic) · 2026

The institutional shape that the American corporate economy carried into 1914 had been built across roughly nine decades through the chartered-corporation form that *Dartmouth College* protected, the New Jersey and Delaware enabling legislation that produced the holding company, the *Santa Clara* headnote that established corporate personhood under the Fourteenth Amendment, and the Sherman Act and the Roosevelt-era trust-busting that supplied the federal regulatory response. The remaining institutional development of the corporate form across the twentieth century would proceed within the foundation that the period from 1819 to 1914 had built. What the next sixty-five years would produce was a transformation in how the form was operated rather than in the foundation it stood on. The corporations that emerged from the merger wave of 1895–1904 were owned by their original founders and their families and the financial sponsors who had organized the consolidations. The corporations that emerged from the 1950s and 1960s were owned by dispersed shareholders who voted by proxy through procedures that left operational control with professional managers whose connection to the underlying capital was indirect. The transformation was operationally consequential. It produced what the mid-twentieth-century literature came to call the managerial corporation, and it produced the political-economic arrangement that organized American economic life across the long mid-twentieth century — the arrangement that subsequent commentary has called variously the postwar accord, the managerial settlement, the embedded liberalism of the Bretton Woods period, or the Treaty of Detroit, after

the 1950 labor agreement that supplied its operational illustration.

Part IV tracks the corporate form across that long mid-twentieth-century period. The opening section examines the institutional pressures that produced the New Deal regulatory framework — the securities and banking legislation of 1933 through 1935, the labor relations framework that the Wagner Act installed, the broader regulatory apparatus that emerged across the period. The second section turns to Berle and Means's 1932 book *The Modern Corporation and Private Property*, which supplied the doctrinal articulation of the separation of ownership from control that became the foundation of mid-twentieth-century corporate-governance thinking. The third section examines the wartime mobilization of 1941 through 1945 and the institutional consolidation of the federal-corporate arrangement that the war produced. The fourth section follows the postwar managerial corporation across the 1950s and 1960s — the operational scale of the consolidated American industrial corporations, the labor accord that the Treaty of Detroit and its successors institutionalized, the institutional infrastructure of what Galbraith called the technostructure. The fifth section examines the strains that accumulated across the late 1960s and 1970s — the productivity stagnation, the inflation and oil shocks, the foreign competition that began to bear on American industrial dominance, the institutional pressures that produced the late-twentieth-century corporate transformation. The closing section follows the Friedman doctrine and the early shareholder-value movement of the 1970s as the doctrinal foundation that the next part will examine in operational detail.

The institutional accomplishments of the corporate form across this period were considerable. The American corporate economy supplied the operational machinery of the Second World War, integrated

millions of returning veterans into the postwar economy through the labor-corporate arrangement the period institutionalized, produced what subsequent commentary has called the broadly shared prosperity of the mid-twentieth-century American economy, and built the institutional infrastructure of what became the world's most consequential consumer economy. The institutional pathologies were equally present. The labor-corporate accord that the Treaty of Detroit supplied operated principally for the unionized industrial workforce and left other sectors — agricultural labor, domestic service, the lower-paid service occupations, the broader range of work conducted outside the unionized industrial corporations — excluded from the benefits the accord supplied. The racial structure of the postwar American workforce, shaped by the discriminatory practices that operated across the period and by the geographical separation of African-American workers from the principal industrial corporations through housing segregation and the related institutional patterns, produced unequal access to the postwar prosperity that the corporate-labor arrangement supplied. The environmental consequences of the postwar industrial expansion — air and water pollution from the chemical, automotive, and broader industrial sectors; the early indicators of climate consequences from the energy-intensive consumer economy the period built; the broader range of environmental costs the period generated — accumulated across the period and would begin to surface only in the late 1960s. The reader registers all of these because the historical record contains all of them.

One — The New Deal Regulatory Framework

The institutional pressures that produced the New Deal regulatory framework had been accumulating across the late nineteenth and early twentieth centuries. The trust-era concentrations of industrial power, the political corruption that accompanied the close institutional integration between corporations and federal and state regulatory authorities, the labor disputes that the integrated industrial corporations generated across the period, the speculative excesses that the 1907 banking panic and the broader range of pre-1914 financial episodes had illustrated — these accumulated institutional concerns had produced the Progressive-era response that Part III examined, but the Progressive framework had been only partial. The First World War's mobilization of the American economy through federal-corporate coordination on a previously unprecedented scale, conducted principally through the War Industries Board chaired by Bernard Baruch, demonstrated the operational possibilities of close federal-corporate coordination and supplied the institutional template that the subsequent New Deal mobilization would build upon. The 1920s, under the Harding, Coolidge, and Hoover administrations, retreated from the wartime coordination and operated under a doctrine of corporate self-regulation that the speculative excesses of the 1928–1929 stock-market boom and the subsequent collapse rendered untenable.

The Great Depression's institutional shock was the proximate cause of the New Deal regulatory framework. The stock-market crash that began on October 24, 1929, produced the longest and deepest economic contraction in American history. Industrial output fell by roughly forty-five percent between 1929 and 1933. Approximately five thousand American banks failed across the same period. Unemployment rose from roughly three percent in 1929 to

approximately twenty-five percent by 1933. The institutional infrastructure of the American capital markets that had emerged across the late nineteenth and early twentieth centuries — the New York Stock Exchange and the supporting investment-banking arrangements that organized American capital allocation — was severely compromised by the disclosures of the post-crash period, which produced extensive evidence of pre-crash manipulation, insider trading, fraudulent disclosures by corporate issuers, and the broader range of operational practices that the largely unregulated pre-1933 capital markets had developed.

Franklin Roosevelt took office on March 4, 1933, with a Democratic majority in Congress and a popular mandate to construct an institutional response. The Banking Act of 1933, signed by Roosevelt on June 16, 1933, and known as the Glass-Steagall Act after its principal sponsors (Senator Carter Glass of Virginia and Representative Henry Steagall of Alabama), supplied the first major piece of the New Deal regulatory framework. The Act required the separation of commercial banking from investment banking — commercial banks could accept deposits and make loans but could no longer underwrite or trade in securities; investment banks could underwrite and trade securities but could no longer accept deposits. The Act established the Federal Deposit Insurance Corporation to insure commercial-bank deposits up to $2,500 (a limit subsequently raised across the decades to the current $250,000) using funds contributed by the insured banks. The Act capped the interest rates that commercial banks could pay on deposits. The combined provisions supplied the institutional framework that the American commercial banking system would operate within for the following sixty-five years, until the Gramm-Leach-Bliley Act of 1999 (which Part V will examine) effectively repealed the Glass-Steagall separation.

The Securities Act of 1933, signed by Roosevelt on May 27, 1933, supplied the disclosure framework that the issuance of corporate securities would operate under in the post-New-Deal capital markets. The Act required that any public offering of corporate securities be preceded by a registration statement filed with the federal government containing extensive information about the issuing corporation, its financial condition, its operations, and the terms of the offering. The Act prohibited fraud and material misrepresentation in connection with securities offerings. The Securities Exchange Act of 1934, signed by Roosevelt on June 6, 1934, established the Securities and Exchange Commission as an independent regulatory agency with authority to enforce the 1933 Act and to regulate the secondary trading of securities on national exchanges. The 1934 Act required the registration of national securities exchanges, established disclosure requirements for publicly traded corporations, prohibited insider trading and market manipulation, and supplied the broader institutional framework that the regulated American capital markets would operate within across the following ninety years. Joseph Kennedy, appointed by Roosevelt as the first chairman of the SEC, conducted the initial institutional development of the agency across 1934 and 1935.

The Public Utility Holding Company Act of 1935, signed by Roosevelt on August 26, 1935, addressed the holding-company structures that had developed across the early twentieth century in the electric and gas utility industries. The Act required the dissolution of the multi-tiered holding-company structures that had concentrated control over American utilities into a small number of large corporate combinations, and imposed federal regulatory authority over the surviving utility corporations through the SEC and the Federal Power Commission. The Investment Company Act and the Investment Advisers Act of 1940 extended the regulatory framework to mutual

funds and investment-advisory firms. The combined securities-regulation framework that the period from 1933 through 1940 produced supplied the operational infrastructure that the regulated American capital markets would continue to operate within across the long mid-twentieth century.

The labor-relations framework that the National Labor Relations Act installed was the other principal regulatory architecture the New Deal produced. The original National Industrial Recovery Act of 1933 had included a labor-relations provision (Section 7(a)) that recognized workers' right to organize and bargain collectively, but the NIRA had been struck down by the Supreme Court in *Schechter Poultry Corp. v. United States* (May 27, 1935) on grounds that the Act unconstitutionally delegated legislative authority to the executive. Senator Robert Wagner of New York had been working on a more comprehensive labor-relations statute since 1934, and the *Schechter* invalidation created the legislative window through which Wagner pressed his bill. The National Labor Relations Act (the Wagner Act, 29 U.S.C. § 151 et seq.) was signed by Roosevelt on July 5, 1935. The Act guaranteed employees the right "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection" (Section 7). The Act prohibited specified unfair labor practices by employers (Section 8) and established the National Labor Relations Board as an independent regulatory agency with authority to certify collective bargaining representatives through democratic elections and to enforce the Act's operative provisions.

The Wagner Act's constitutionality was upheld by the Supreme Court in *NLRB v. Jones & Laughlin Steel Corp.* (April 12, 1937), a

decision that — along with the broader "switch in time that saved nine" jurisprudential shift of 1937 — sharply expanded the federal commerce power and supplied the constitutional foundation for the broader New Deal regulatory framework. American union membership grew from roughly three million in 1933 to over fifteen million by 1946, principally through the organizing campaigns conducted under the new statutory framework. The Congress of Industrial Organizations, founded in 1935 as the Committee for Industrial Organization within the American Federation of Labor and operating as an independent labor federation from 1938, conducted the principal industrial-union organizing of the late 1930s. The United Auto Workers (organized 1935), the United Steelworkers (organized 1942 from the earlier Steel Workers Organizing Committee), the United Electrical Workers, and the broader range of CIO-affiliated unions that emerged across the period transformed the American workforce's institutional position vis-à-vis the integrated industrial corporations.

The Fair Labor Standards Act of 1938 supplied the federal wage-and-hour framework — a minimum wage initially set at twenty-five cents per hour and rising across the subsequent legislation, a maximum forty-hour workweek with mandatory overtime pay for hours beyond, restrictions on child labor in industries operating in interstate commerce. The Social Security Act of 1935 supplied the federal old-age and disability framework — payroll-tax-funded retirement and disability benefits that operated as a parallel federal arrangement to the employer-provided pension benefits that the postwar labor accord would later institutionalize.

The regulatory framework that the New Deal produced across the period from 1933 through 1938 supplied the operational architecture within which the American corporate economy would continue to

operate across the long mid-twentieth century. The securities-disclosure and capital-markets regulation, the labor-relations framework, the federal wage-and-hour and social-insurance arrangements, the holding-company and utility regulation, the antitrust framework that the Sherman Act and the supporting legislation had established and that the New Deal Justice Department would continue to enforce across the period — these combined regulatory arrangements supplied the institutional setting within which the post-New-Deal American corporate economy operated. The corporate form itself, as it had been established by the post-*Dartmouth* doctrinal framework and the New Jersey and Delaware chartering competition, was unaltered by the New Deal regulatory framework. The corporate-personhood doctrine that the *Santa Clara* headnote pathway had established remained in operation. The state-level chartering competition that the New Jersey and Delaware enabling legislation had produced continued operating across the period. What the New Deal added was a federal regulatory overlay that constrained corporate operations across specified dimensions — securities issuance and trading, labor relations, wage and hour conditions, banking and utility activities, antitrust conduct — without altering the underlying corporate-form architecture that the nineteenth-century institutional development had built.

Two — Berle and Means and the Separation of Ownership from Control

The doctrinal articulation that supplied the foundation of mid-twentieth-century corporate-governance thinking was Adolf Berle and Gardiner Means's *The Modern Corporation and Private Property*, published in 1932 (the manuscript completed in 1931, published shortly before Roosevelt's election). Berle, a Columbia law professor and one of the principal members of Roosevelt's "Brain Trust," and Means, a Columbia economist whose statistical work supplied the empirical foundation for the book, together produced what would shortly become the standard analytical frame for American corporate governance across the following half-century. Their book examined the operational reality of the large American industrial corporation as it had emerged from the merger wave of 1895–1904 and the subsequent consolidations of the 1910s and 1920s, and it documented what Berle and Means called the separation of ownership from control — the institutional pattern under which the nominal owners of the corporation (the dispersed shareholders) had ceased to exercise operational control over the corporation's activities, and operational control had passed to the professional managers whose connection to the underlying capital was indirect.

The empirical foundation of the book was Means's compilation of data on the two hundred largest American non-financial corporations as of 1929. The data showed that in approximately sixty-five percent of these corporations the shareholder body was sufficiently dispersed that no single shareholder or coordinated group held a controlling interest. Operational control of these corporations was exercised by the professional managers and the boards of directors that the managers themselves heavily influenced through their control over the proxy

machinery that elected the directors. The shareholders — by 1929 numbering in the tens or hundreds of thousands for the largest corporations — held passive ownership positions whose principal function was the receipt of dividends that the managers chose to distribute. The corporate form had, in operational practice, become an institutional vehicle through which dispersed capital was deployed under the direction of a professional managerial class whose interests, Berle and Means argued, were not necessarily aligned with those of the underlying owners.

The doctrinal argument that Berle and Means built on the empirical foundation proceeded in three principal moves. First, they argued that the traditional logic of private property — that the owner of property bears the gains and losses associated with that property and is therefore motivated to manage it efficiently — no longer operated for the large American corporation. The owners (the shareholders) did not manage. The managers did not own. The motivational structure that classical property theory had assumed was operationally absent from the large corporation as it actually existed. Second, they argued that the traditional logic of profit motivation — that the entity organized to maximize profits will be operated to maximize profits — was likewise compromised. The managers, who did not own the residual claim, had no direct interest in profit maximization beyond what the managerial compensation arrangements and the broader institutional pressures supplied. The managers might prefer institutional stability, organizational growth, the perpetuation of their own positions, or the broader range of objectives that did not necessarily coincide with shareholder-return maximization. Third, they argued — and this was the move that would become consequential across the subsequent half-century — that the operational reality of the modern corporation called for a different theoretical foundation than the traditional

property-rights framework. The corporation was an institutional form whose purposes and constraints could not be derived from the property rights of the dispersed shareholders alone but required a broader institutional theory.

The final chapter of the book, drafted principally by Berle, sketched what such a broader institutional theory might look like. The corporation, Berle argued, had become an institution whose operational significance extended beyond the interests of its shareholders to the broader community within which it operated. The employees who worked within the corporation, the customers who purchased its products, the communities within which it operated, the political society within which the corporation functioned — these had institutional claims on the corporation's conduct that the property rights of the dispersed shareholders did not exhaust. "Neither the claims of ownership nor those of control can stand against the paramount interests of the community," Berle wrote. "Should the corporate leaders, for example, set forth a program comprising fair wages, security to employees, reasonable service to their public, and stabilization of business, all of which would divert a portion of the profits from the owners of passive property, and should the community generally accept such a scheme as a logical and human solution of [the corporate problem]" — the institutional arrangement that emerged would be one in which the corporation was understood as a quasi-public institution whose conduct was subject to constraints that the property rights of the dispersed shareholders did not by themselves supply.

Berle's analysis supplied the doctrinal foundation for what would later be called the stakeholder model of corporate governance — the model in which the corporation is understood as an institution responsible to multiple constituencies (shareholders, employees,

customers, communities, the broader public interest) rather than to its shareholders alone. The model would become the standard frame for American corporate-governance thinking across the long mid-twentieth century, and the Berle-Means analysis would be the standard doctrinal anchor for that model. Berle himself would continue elaborating the analysis across his subsequent career, principally in *The Twentieth-Century Capitalist Revolution* (1954) and *Power Without Property* (1959). The institutional reality that Berle and Means had documented — dispersed shareholders, professional managers in operational control, corporations operating as quasi-public institutions whose conduct extended beyond the immediate interests of their owners — became the operational template that the mid-twentieth-century American corporate economy broadly conformed to.

The Berle-Means analysis was not without its critics across the period. Some commentators argued that the separation of ownership from control was less complete than Berle and Means had suggested, and that even dispersed shareholders retained meaningful influence over corporate conduct through their capacity to sell their shares (the so-called Wall Street Walk) and through the discipline that the market for corporate control supplied. Other commentators argued that the managerial autonomy that Berle and Means had described was a transitional condition that would prove unstable across the longer run, and that the institutional pressures that would eventually emerge — capital-market discipline, takeover threats, the broader range of mechanisms that subsequent decades would develop — would restore something closer to the property-rights logic that classical theory had assumed. The critical debate continued across the period, and the late-twentieth-century shareholder-value movement that Part V will examine drew its doctrinal foundation largely from the critical strand of mid-twentieth-century corporate-governance thinking. But across the

long mid-twentieth century, from approximately the 1930s through approximately the 1970s, the Berle-Means analysis supplied the dominant doctrinal frame within which American corporate governance was understood. The corporations that operated across that period operated as managerial enterprises essentially as Berle and Means had described, and the institutional pattern they had documented was the dominant operational reality of the period.

Three — The War and the Federal-Corporate Consolidation

The American mobilization for the Second World War, conducted from approximately 1940 through 1945, produced the institutional consolidation of the federal-corporate-labor arrangement that would dominate the postwar period. The scale of the wartime mobilization was unprecedented in American institutional history. Federal spending rose from approximately $9 billion in fiscal 1939 (roughly ten percent of GDP) to approximately $98 billion in fiscal 1945 (roughly forty-five percent of GDP). Industrial production approximately doubled across the same period. The American military grew from approximately 334,000 personnel in 1939 to over twelve million by 1945. The federal government, conducting the mobilization through close coordination with the major American industrial corporations, produced an institutional pattern of public-private coordination at scales the First World War had foreshadowed and that the New Deal regulatory framework had not specifically anticipated.

The institutional machinery of the wartime mobilization deserves brief specification because its institutional residue shaped the postwar period. The War Production Board, established in January 1942 under the chairmanship of Donald Nelson, was the principal coordinating

agency for converting American industrial capacity from civilian to military production. The WPB issued orders that directed the major industrial corporations to suspend civilian production (the production of automobiles for civilian sale was halted in February 1942 and resumed only in late 1945) and to convert their capacity to military production. The Office of Price Administration, established in April 1941 under the chairmanship of Leon Henderson (and subsequently John Kenneth Galbraith from 1941 to 1943, and Chester Bowles from 1943), administered the price-control system that constrained inflation across the wartime period. The Office of War Mobilization, established in May 1943 under James Byrnes, supplied the executive-branch coordination that the broader mobilization required. The Office of Scientific Research and Development, established in June 1941 under Vannevar Bush, coordinated the federal-corporate research arrangements that produced the radar, the proximity fuse, the broader range of wartime technological developments, and the Manhattan Project that produced the atomic bomb. The Manhattan Project alone — operating across the Hanford site in Washington, the Oak Ridge facilities in Tennessee, the Los Alamos laboratory in New Mexico, and the broader network of academic and industrial sites — employed approximately 130,000 workers at its peak, spent approximately $2 billion (roughly $30 billion in current terms), and was conducted principally through Du Pont, Union Carbide, Tennessee Eastman, the Stone & Webster engineering firm, and the broader range of corporate contractors that operated the project under federal supervision.

The institutional pattern of the wartime mobilization established several features that would persist across the postwar period. First, the federal government's procurement contracts were directed principally to the largest American industrial corporations, which had the operational capacity and the established managerial structures to handle the

production volumes the wartime mobilization required. The thirty-three largest American corporations received approximately fifty percent of the federal war contracts; the one hundred largest received approximately two-thirds. The institutional consolidation that resulted concentrated the American industrial economy further into the hands of the large corporations that had emerged from the merger wave and the subsequent consolidations of the early twentieth century, and supplied the operational foundation on which the postwar industrial economy would proceed. Second, the federal-corporate research arrangements that the war produced — the cost-plus contracts under which corporations conducted federal research on guaranteed profitable terms, the institutional networks that connected federal scientific funding to corporate research-and-development operations, the rotating personnel arrangements that the war institutionalized — established the foundation for what would become the postwar military-industrial complex that the Eisenhower farewell address would shortly identify by name. Third, the wartime labor arrangements — the National War Labor Board's mediation of labor-management disputes, the no-strike pledges that the major unions had given for the duration of the war, the wage controls that the OPA administered, the broader range of institutional arrangements that integrated organized labor into the wartime planning machinery — supplied the institutional foundation on which the postwar labor accord would build.

The war's institutional consequences extended beyond the immediate mobilization. The G.I. Bill (the Servicemen's Readjustment Act of 1944), enacted on June 22, 1944, provided veterans with educational benefits, low-cost mortgages, unemployment insurance, and the broader range of benefits that supplied the institutional foundation for the postwar suburban consumer economy. Roughly half of the sixteen million Americans who served in the war used the G.I. Bill's

educational benefits across the following decade. The home-mortgage provisions, which guaranteed VA loans at preferential terms, supplied the financial mechanism through which the postwar suburban housing boom was conducted. The Bretton Woods Conference of July 1944, conducted at the Mount Washington Hotel in New Hampshire and involving delegates from forty-four Allied nations, established the institutional framework for postwar international monetary and financial arrangements — the International Monetary Fund, the International Bank for Reconstruction and Development (later the World Bank), and the dollar-gold standard that would operate as the framework for international economic relations across the following twenty-seven years.

The postwar transition was the operational challenge that the institutional infrastructure of the wartime mobilization had not specifically prepared for. The conversion of the American industrial economy back to civilian production produced strikes across multiple industries in 1945 and 1946 as the no-strike pledges expired and as unions pressed for wage increases that wartime price controls had suppressed. The 1946 strike wave — approximately five thousand strikes involving roughly five million workers across the year — was the most extensive labor action in American history to that point. The Taft-Hartley Act of June 1947, passed by Congress over Harry Truman's veto, modified the Wagner Act framework by adding restrictions on union conduct (prohibiting closed shops and secondary boycotts, requiring union officials to file non-Communist affidavits, providing for federal injunctions against strikes that threatened the national interest) and shifted the labor-relations institutional balance toward employers. The institutional consolidation that the war had produced — the federal-corporate-labor arrangement that had operated under wartime emergency authority — would persist into the postwar

period, but on terms that the Taft-Hartley modifications had adjusted in favor of corporate management. The Treaty of Detroit, signed three years later, supplied the institutional formalization of the labor-corporate arrangement that the postwar period would operate under.

Four — The Postwar Managerial Corporation

The American corporate economy of the 1950s and 1960s operated under an institutional arrangement that combined several features the previous sections have examined: the New Deal regulatory framework that supplied the operational architecture for securities, banking, and labor relations; the Berle-Means doctrinal frame that articulated the separation of ownership from control as the foundation of corporate-governance thinking; the wartime federal-corporate consolidation that integrated the largest American industrial corporations into a continuing arrangement with the federal government through procurement contracts, research funding, and the broader range of institutional connections that the war had built; and the labor accord that the Treaty of Detroit and its successors institutionalized as the operational foundation of the postwar industrial labor relations.

The operational scale of the American industrial corporations across the period was considerable. By approximately 1960, the two hundred largest American non-financial corporations controlled roughly sixty percent of American manufacturing assets. General Motors employed approximately 600,000 workers across its global operations and produced roughly half of the American automobiles sold annually. United States Steel employed roughly 270,000 workers and produced roughly thirty percent of American steel output. AT&T (the Bell System) employed roughly one million workers and operated the

American telephone network as a federally regulated monopoly. General Electric, Ford, Chrysler, Westinghouse, Du Pont, Procter & Gamble, the major oil companies — the Standard Oil successor corporations that had emerged from the 1911 dissolution and that had continued operating as separate but coordinated entities across the subsequent decades — and the broader range of large American industrial corporations operated at scales that the prewar economy had begun to develop and that the postwar consolidation had completed.

The Treaty of Detroit, signed on May 23, 1950, between the United Auto Workers and General Motors, supplied the institutional formalization of the postwar labor-corporate accord. Walter Reuther, who had become president of the UAW in 1946 after his successful leadership of the 1945–1946 GM strike, had negotiated a series of contracts with the major automakers across the late 1940s that progressively expanded the wage-and-benefit terms that unionized auto workers received. The 1950 GM contract was the most comprehensive of these. The contract ran for five years (the longest term that any major American collective-bargaining contract had run to that point), included annual wage increases tied to productivity improvements ("annual improvement factor" of four cents per hour) plus cost-of-living adjustments tied to the Bureau of Labor Statistics consumer-price index, established a fully-funded pension plan of $125 per month (including Social Security benefits), provided company-funded healthcare insurance covering one-half of medical costs for workers and their families, and established the "modified union shop" arrangement under which new GM hires were required to join the UAW for their first year of employment.

In exchange for the wage and benefit improvements, the UAW renounced certain bargaining rights that Reuther had previously

pursued — most importantly, the right to bargain over investment decisions, production methods, plant location, and the broader range of strategic decisions that the company's management retained. The contract was, in operational substance, a settlement under which the union accepted the company's "right to manage" in exchange for the company's commitment to share the productivity gains the firm generated with the unionized workforce. *Fortune* magazine, in its August 1950 issue, called the agreement the "Treaty of Detroit," and the name stuck. Chrysler and Ford signed similar agreements with the UAW within months of the GM settlement. The institutional pattern spread across other unionized industries across the following decade. The United Steelworkers' contracts with the major steel producers, the Teamsters' contracts with the trucking industry, the International Brotherhood of Electrical Workers' contracts with the electrical-equipment manufacturers, the broader range of major industrial union contracts that emerged across the 1950s and 1960s followed the Treaty of Detroit template — long-term contracts, wage increases tied to productivity, cost-of-living adjustments, employer-funded pension and healthcare benefits, union acceptance of management's strategic authority.

The institutional consequence of the Treaty of Detroit pattern across the long mid-twentieth century was the broadly shared prosperity that the subsequent historical literature has emphasized. Real wages for American industrial workers approximately doubled across the period from 1947 to 1973. The American median household income approximately doubled across the same period. The expansion of the American middle class — the homeownership rates that rose from approximately forty-three percent in 1940 to roughly sixty-five percent by 1970, the educational attainment that the G.I. Bill and the subsequent expansion of public higher education made available, the broader range

of consumer-economy participation that the period supplied — proceeded largely through the institutional arrangement that the labor accord institutionalized. The institutional pattern operated principally for the unionized industrial workforce. Approximately one-third of American workers were union members at the peak in the mid-1950s, and the broader range of nonunion industrial and white-collar workers received compensation arrangements that the union contracts heavily set the pattern for. The institutional infrastructure of the postwar American middle class was, in operational substance, the labor-corporate accord that the Treaty of Detroit had institutionalized.

The doctrinal articulation of the postwar managerial corporation came principally from John Kenneth Galbraith, the Harvard economist whose three principal books of the period — *American Capitalism* (1952), *The Affluent Society* (1958), and *The New Industrial State* (1967) — supplied the most consequential interpretive frame for the institutional pattern the period had produced. Galbraith's central argument was that the large American industrial corporations had transcended the classical economic theory of the profit-maximizing firm and operated as planning organizations whose principal objective was the reduction of operational uncertainty rather than the maximization of immediate profit. The "technostructure" — Galbraith's term for the professional managerial class that operated the large corporations, comprising executives, engineers, marketing specialists, financial managers, research personnel, and the broader range of professional staff that conducted corporate operations — pursued institutional stability through long-range planning that integrated supply chains, managed consumer demand through advertising, coordinated with the federal government through the procurement and regulatory arrangements that the postwar period had institutionalized, and operated through the labor-corporate accord that the Treaty of Detroit had

supplied. The entrepreneur of classical economic theory, Galbraith argued, had effectively disappeared from the modern industrial corporation. Decisions were made not by identifiable individuals but by committees of specialists whose collective deliberations produced the operational outcomes the corporation generated. The individual chief executive officer was, on Galbraith's analysis, a figure of considerably less operational consequence than the technostructure as a whole.

The institutional consequence, in Galbraith's analysis, was that the American economy of the 1950s and 1960s operated less through the classical market mechanism that economic theory described and more through the coordinated planning that the technostructure conducted. "The invisible hand of the market," Alfred Chandler would later put it in *The Visible Hand: The Managerial Revolution in American Business* (1977), "has been replaced with the visible hand of the industrial bureaucracy." Chandler's analysis, which traced the historical development of the multi-divisional managerial corporation across the late nineteenth and early twentieth centuries through detailed examination of General Motors, Du Pont, Standard Oil, and the broader range of American industrial corporations that had pioneered the multi-divisional structure, supplied the historical-institutional foundation for the analytical pattern that Galbraith had articulated. The American economy had become, in operational substance, a system of large planning organizations whose internal operations had displaced the market coordination that classical theory had described. The technostructure operated for what Galbraith called the affirmative purposes of organizational survival, growth, and continuity — purposes that operationally diverged from the shareholder-return maximization that classical corporate-governance theory had assumed.

The institutional arrangement that the postwar managerial corporation operated within was, in retrospect, exceptionally stable across approximately three decades. The federal regulatory framework that the New Deal had built supplied the operational architecture. The labor-corporate accord supplied the institutional foundation. The Bretton Woods international monetary arrangement supplied the external environment. The American industrial dominance that the war's devastation of European and Japanese competition had produced supplied the competitive setting within which American corporations operated without serious foreign competition. The shareholder body of the large American corporations was dispersed, the institutional investors (principally pension funds and mutual funds, which were growing across the period but had not yet reached the scale they would achieve in subsequent decades) operated passively rather than as active corporate-governance participants, and the professional managerial class that operated the corporations did so with operational discretion that the constraints of the postwar institutional arrangement permitted.

The institutional pattern produced specific operational developments worth noting because they would shape what came next. The conglomerate movement of the 1960s — the wave of corporate consolidations in which large diversified corporations acquired unrelated operating subsidiaries across multiple industries — was the principal corporate-strategic development of the late postwar period and the operational illustration of the managerial-discretion arrangement at work. Harold Geneen, who became chief executive of International Telephone and Telegraph in 1959, conducted what was probably the most aggressive of the conglomerate-building programs across the 1960s — acquiring approximately 350 companies across the decade in industries ranging from insurance (Hartford Fire Insurance, acquired 1970) to consumer products (Continental Baking, acquired 1968) to

lodging (Sheraton Hotels, acquired 1968) to financial services (Avis, acquired 1965) to publishing and broadcasting (Howard Sams, ITT Educational Services, and others). ITT's revenues grew from approximately $930 million in 1959 to approximately $17 billion by 1977. Similar conglomerate-building was conducted across the period by James Ling at Ling-Temco-Vought (Wilson & Co. meat-packing acquired 1967, Jones & Laughlin Steel acquired 1968), Charles Bluhdorn at Gulf+Western (Paramount Pictures acquired 1966, Madison Square Garden acquired 1977), Tex Thornton at Litton Industries, and the broader range of conglomerate-builders who emerged across the decade. The doctrinal foundation for the conglomerate strategy was that professional management could be applied across multiple industries — that the management skills the technostructure had developed in operating a steel company or an aerospace contractor could be transferred to operating an insurance company or a hotel chain. The operational results of the conglomerate movement across the subsequent decades were mixed, and several of the major conglomerates would be largely dismantled across the 1980s and 1990s under the shareholder-value pressure that Part V will examine, but the conglomerate movement was the operational expression of the managerial-discretion arrangement at its peak.

The institutional pattern was stable. The strains that would shortly transform it began to accumulate across the late 1960s.

Five — The Strains of the Late 1960s and 1970s

The institutional arrangement that the postwar managerial corporation operated within began to encounter accumulating pressures across the late 1960s and 1970s. The pressures were operationally several and their cumulative impact transformed the institutional setting within which American corporations operated.

The productivity stagnation that began across the late 1960s reduced the operational foundation on which the labor-corporate accord had rested. American manufacturing productivity, which had grown at roughly three percent per year across the period from 1948 to 1973, dropped to roughly one percent per year across the period from 1973 to 1979. The productivity slowdown reduced the operational basis for the wage increases that the labor accord had institutionalized — the annual improvement factor and the cost-of-living adjustments that the Treaty of Detroit pattern had supplied operated under the assumption that productivity gains would continue at the postwar rates that had been generated by the postwar capital investment, the continuing technological development, and the broader range of operational improvements that the postwar period had produced. The productivity stagnation produced strains within the labor-corporate accord that the wage-and-benefit improvements the unions continued to pursue would become operationally difficult for the corporations to support.

The inflation that began across the late 1960s, driven principally by the Johnson administration's combined financing of the Vietnam War and the Great Society programs and accelerated by the 1973 OPEC oil embargo and the subsequent oil-price shocks, transformed the operational environment within which corporations and unions operated. American consumer-price inflation rose from approximately 1.5 percent per year in the mid-1960s to approximately twelve percent

by 1974, dropped briefly across the mid-1970s, and rose again to approximately fourteen percent by 1980. The cost-of-living adjustments that the labor accord had institutionalized fed the inflation through the wage-price spiral that operated across the period — wage increases generated cost increases, which generated price increases, which generated further wage demands through the cost-of-living machinery. The combined productivity stagnation and inflation produced what economists came to call stagflation — simultaneous slow growth and rising prices — which neither the Keynesian demand-management framework that had operated across the postwar period nor the conventional corporate-managerial planning approach had specific institutional tools to address.

The international competitive environment within which American industrial corporations operated transformed across the same period. The reconstruction of European and Japanese industrial capacity that had been proceeding since the war's end reached operational maturity across the late 1960s and 1970s. Japanese automobile imports, which had been negligible across the early 1960s, reached approximately ten percent of the American automobile market by 1973 and continued growing across the following decade. German and Japanese steel, electronics, and machine-tool exports captured progressively larger shares of American and global markets across the period. The American industrial corporations that had operated across the postwar period without serious foreign competition faced, by the 1970s, competitive pressures from Japanese and European producers whose productivity, product quality, and cost structures had become operationally superior in several principal industries. The American steel industry's decline across the late 1960s and 1970s, the American automobile industry's productivity gap with the Japanese producers, the broader range of competitive pressures that emerged across the period — these

foreign-competitive pressures undermined the operational foundation on which the postwar institutional arrangement had rested.

The collapse of the Bretton Woods international monetary arrangement, conducted across August 1971 through 1973, produced the external monetary environment within which the subsequent transformation operated. Richard Nixon's announcement on August 15, 1971 that the United States would suspend the convertibility of the dollar into gold (the "Nixon shock") effectively ended the dollar-gold standard that had operated since 1944. The subsequent Smithsonian Agreement of December 1971 attempted to maintain fixed exchange rates with a devalued dollar; the arrangement collapsed by March 1973 when the major industrialized economies moved to floating exchange rates. The institutional infrastructure of international monetary coordination that had supplied the external environment for the postwar managerial corporation was, by the mid-1970s, sharply altered.

The political pressures that emerged across the same period transformed the regulatory environment within which corporations operated. The consumer-protection movement, exemplified by Ralph Nader's *Unsafe at Any Speed* (1965) and the subsequent regulatory developments — the National Traffic and Motor Vehicle Safety Act of 1966, the establishment of the Consumer Product Safety Commission in 1972, the Environmental Protection Agency in 1970, the Occupational Safety and Health Administration in 1970 — produced a regulatory framework that constrained corporate operations across a considerably wider range of dimensions than the New Deal regulatory architecture had specifically anticipated. The civil-rights legislation of the 1960s (Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission established 1965, the subsequent legislation across the late 1960s and 1970s) extended federal regulatory authority

over corporate employment practices in ways the postwar arrangement had not specifically addressed. The environmental legislation of the 1970s (the Clean Air Act of 1970, the Clean Water Act of 1972, the Endangered Species Act of 1973, the Resource Conservation and Recovery Act of 1976, the Superfund legislation of 1980) imposed compliance costs and operational constraints that the postwar industrial economy had not specifically incorporated into its planning.

The cumulative effect of these accumulating pressures across the 1970s was the institutional crisis of the postwar managerial corporation. The corporate-governance arrangement that the Treaty of Detroit and the Berle-Means managerial-discretion framework had supplied operated less effectively under the conditions of stagflation, foreign competition, and expanded regulatory constraint than it had operated under the postwar conditions of productivity growth, American industrial dominance, and limited regulatory oversight. The dispersed shareholders whose passive ownership Berle and Means had documented in 1932 had grown across the postwar period into the institutional investor base whose interests would shortly assert themselves more actively. The corporate financial performance of the major American industrial corporations across the 1970s — declining profit margins, share prices that lagged behind inflation, the broader range of financial difficulties that several major corporations encountered — produced the institutional pressures that would shortly transform the corporate-governance arrangement.

The Chrysler Corporation's near-collapse in 1979 and the federal loan-guarantee program that rescued the company supplied an operational illustration of the institutional strains. Chrysler had been the smallest of the Big Three automakers across the postwar period, and its cost structure, product line, and operational capacity were the least

competitive against the Japanese imports that had captured progressively larger shares of the American automobile market across the 1970s. By late 1979 Chrysler's accumulated losses had brought the company to the edge of bankruptcy. The Chrysler Corporation Loan Guarantee Act, signed by Jimmy Carter on January 7, 1980, provided $1.5 billion in federal loan guarantees that allowed the company to obtain bank financing for a restructuring program. The conditions attached to the federal guarantees required Chrysler to obtain concessions from the UAW (the union accepted wage reductions, work-rule changes, and a delayed cost-of-living adjustment), from its bondholders, and from its suppliers. The restructuring stabilized Chrysler across the early 1980s, but the institutional pattern the rescue established — federal financial support for a major American industrial corporation conditioned on labor concessions and operational restructuring — pointed toward the new institutional setting that the next decade would produce.

Six — The Friedman Doctrine and the Doctrinal Foundation of the Next Period

The doctrinal articulation of the institutional transformation that would shortly transform the American corporation came principally from Milton Friedman, the University of Chicago economist whose body of work across the 1960s and 1970s supplied the principal intellectual foundation for what would later be called the shareholder-value movement, the neoliberal turn in American economic policy, or the late-twentieth-century corporate transformation. Friedman's 1970 New York Times Magazine essay "The Social Responsibility of Business Is to Increase Its Profits," published on September 13, 1970, supplied the doctrinal statement that would shortly become the standard intellectual reference for the institutional pattern that would transform the American corporate economy across the following four decades.

Friedman's argument was direct. The corporation, on his account, was a private association of shareholders whose capital had been pooled for the purpose of generating returns on that capital. The managers of the corporation were agents of the shareholders, whose fiduciary duty was to operate the corporation for the benefit of the shareholders. The various stakeholder claims that the Berle-Means analysis and the broader mid-century corporate-governance literature had articulated — the employees, the customers, the communities, the broader public interest — had no proper place in corporate management. The interests of those stakeholders were properly addressed through the political process, through the market mechanisms within which corporations operated, and through the broader institutional arrangements that society had developed to address them. Corporate management's redirection of corporate resources toward those stakeholder claims, on Friedman's account, was a form of spending that was not the manager's

to spend — the manager was, in effect, taxing the shareholders without their consent and spending the proceeds on causes the manager had chosen. "In a free-enterprise, private-property system," Friedman wrote in the essay, "a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society." Anything beyond that — corporate philanthropy, social responsibility, the pursuit of stakeholder interests, the broader range of corporate-conduct objectives that the mid-century managerial corporation had developed — was, in Friedman's articulation, the corporate executive's imposition on the shareholders of preferences that the shareholders had not chosen.

The argument supplied the doctrinal counter to the Berle-Means stakeholder model that had operated across the mid-twentieth century. Where Berle had argued in 1932 that "neither the claims of ownership nor those of control can stand against the paramount interests of the community," Friedman in 1970 argued that the corporation was a private institution whose proper purpose was the maximization of shareholder returns and whose managerial obligations ran exclusively to the shareholders. The doctrinal positions were directly opposed, and the institutional pattern that would shortly emerge would heavily favor the Friedman position over the Berle position.

The institutional infrastructure that would carry the Friedman doctrine into operational practice was developing across the 1970s alongside the doctrinal articulation. Michael Jensen and William Meckling, in their 1976 paper "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," published in the *Journal of Financial Economics*, supplied the academic-finance

foundation for the agency-theoretic analysis of corporate governance that would shortly become the standard framework for thinking about the relationship between shareholders and managers. The paper articulated the corporation as a "nexus of contracts" among the various parties (shareholders, managers, debtholders, employees, suppliers) and analyzed the relationships among them through the agency-cost framework that subsequent corporate-governance scholarship would build upon. The institutional implication of the Jensen-Meckling analysis was that the agency costs imposed on shareholders by managers whose interests diverged from shareholder interests were operationally significant, and that institutional arrangements should be designed to minimize those costs.

The institutional vehicles that would shortly emerge to implement the shareholder-value framework were also developing across the late 1970s. The leveraged buyout, pioneered by Henry Kravis and George Roberts at Kohlberg Kravis Roberts (founded 1976) and by Theodore Forstmann at Forstmann Little (founded 1978), supplied the financial mechanism through which the underperforming managerial corporations of the 1970s could be acquired by financial sponsors, restructured under direct shareholder pressure, and either operated more profitably or broken apart and sold for parts. The hostile-takeover technique, developed principally by T. Boone Pickens at Mesa Petroleum across the late 1970s and refined across the early 1980s by Pickens, Carl Icahn, Sir James Goldsmith, and the broader range of corporate raiders that emerged across the period, supplied the operational mechanism through which the market for corporate control could discipline underperforming corporate management. The junk-bond financing that Michael Milken developed at Drexel Burnham Lambert across the late 1970s supplied the capital-markets infrastructure that allowed the leveraged buyouts and hostile takeovers

to be financed at scales the prior capital-markets infrastructure had not made possible.

The institutional residue that had accumulated by approximately 1980 — the Friedman doctrinal articulation, the Jensen-Meckling agency-theoretic foundation, the leveraged buyout and hostile-takeover techniques, the junk-bond financing infrastructure — supplied the operational machinery that the next period would deploy to transform the American corporate economy. The institutional pattern of the postwar managerial corporation, which had operated across approximately three decades on the foundation that the New Deal regulatory framework, the Berle-Means doctrinal frame, the wartime federal-corporate consolidation, and the Treaty of Detroit labor accord had supplied, would be transformed across the following two decades into the institutional pattern that the present case calls the shareholder-value corporation. The doctrinal foundation, the institutional vehicles, and the operational techniques were all in place by approximately 1980. Part V handles the transformation.

The institutional accomplishments and the institutional pathologies of the postwar managerial corporation sit alongside each other in the historical record. The broadly shared prosperity that the labor-corporate accord institutionalized, the operational efficiencies that the large managerial corporations achieved, the institutional stability that the postwar arrangement supplied, the consumer economy that the period built — these were considerable accomplishments. The exclusions that the labor accord operated under — agricultural labor, domestic service, the racial structure of the postwar workforce, the geographical segregations that operated alongside the labor arrangement — were equally considerable pathologies. The environmental costs that the postwar industrial expansion produced, the strategic blindness to

foreign-competitive developments that the period's institutional stability had encouraged, the productivity stagnation and the accumulating institutional rigidities that produced the strains of the 1970s — these were the institutional weaknesses that the period had developed. The corporate-governance arrangement that the period operated under — managerial discretion subject to the diffuse constraints of the Berle-Means stakeholder model and the New Deal regulatory framework — would shortly be replaced by an institutional arrangement that imposed sharper constraints on managers in the name of shareholder returns. Whether the replacement was operationally better or worse, on whatever metrics the reader chooses to apply, is a question the next part will address by tracking what the replacement actually produced. The historical record, by approximately 1980, contained the institutional accomplishments and the institutional pathologies of the postwar managerial corporation and was preparing to contain the institutional accomplishments and the institutional pathologies of what would shortly follow.

Part V — The Shareholder-Value Transformation and the Contemporary Form, c. 1980 – 2026

Thomas J. Bryan with Claude (Anthropic) · 2026

The institutional pattern of the postwar managerial corporation that Part IV examined was, in operational substance, replaced across the period from approximately 1980 through approximately 2010 by an institutional pattern that subsequent commentary has called the shareholder-value corporation, the financialized corporation, or the neoliberal corporation depending on the analytical frame the commentator deployed. The doctrinal foundation that the shareholder-value framework operated under had been articulated by Milton Friedman in 1970 and elaborated by Michael Jensen and William Meckling in 1976. The institutional vehicles that carried the framework into operation — the leveraged buyout, the hostile takeover, the junk-bond capital markets that Michael Milken developed at Drexel Burnham Lambert, the executive compensation arrangements linked to stock-price performance, the broader range of operational techniques that the financial-services industry developed across the period — were assembled across the late 1970s and the 1980s into the operational machinery that transformed the American corporate economy across the following three decades. The chartered-corporation form itself remained essentially unchanged from the institutional foundation that the period from 1819 to 1914 had built. The state-level chartering competition continued operating, with Delaware's dominance persisting and being augmented across the period by Nevada and other low-regulation chartering jurisdictions for certain categories of

corporation. The doctrinal protections that *Dartmouth College*, *Santa Clara*, and the broader nineteenth-century corporate-personhood elaboration had supplied remained in operational force, and were extended across the period through the First Amendment cases (*First National Bank of Boston v. Bellotti* in 1978, *Citizens United v. FEC* in 2010, *Burwell v. Hobby Lobby Stores* in 2014) that progressively widened the constitutional protections corporations could invoke. The transformation that proceeded across the period from approximately 1980 to the present operated within the foundation rather than altering it.

Part V tracks the corporate form across the period from approximately 1980 to 2026. The opening section examines the shareholder-value transformation of the 1980s — the leveraged-buyout movement, the hostile-takeover wave, the executive compensation arrangements that linked managerial pay to stock-price performance, the operational restructuring of the major American industrial corporations that followed. The second section turns to the financial deregulation of the 1980s and 1990s — the gradual erosion of the New Deal regulatory framework through legislative and administrative changes, the Gramm-Leach-Bliley Act of 1999 that effectively repealed the Glass-Steagall separation, and the broader pattern that the period institutionalized. The third section examines the financialization of the American corporate economy across the 1990s and 2000s — the rise of private equity, the institutional investor concentration, the financial-engineering operations that progressively occupied a larger share of corporate activity. The fourth section follows the 2008 financial crisis and the regulatory response — the operational mechanics of the crisis, the federal interventions through TARP and the Federal Reserve facilities, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the institutional residue that the

crisis and the response together produced. The fifth section examines the *Citizens United* decision of 2010 and the corporate-political relationship that the contemporary period operates within. The sixth section follows the contemporary patterns — the rise of the index-fund asset managers and their corporate-governance position, the platform-economy concentration that has produced the seven or eight technology corporations whose combined market capitalization exceeds that of most national economies, and the institutional patterns the present moment carries. The closing section turns back to Innocent IV in 1245 and the institutional residue the eight hundred years from the *Apparatus* to 2026 have accumulated.

The institutional accomplishments and the institutional pathologies of the contemporary corporate form sit alongside each other in the historical record. The technological and operational achievements that the late-twentieth and early-twenty-first century American corporate economy has produced — the computing technologies, the biotechnology and pharmaceutical developments, the consumer products, the broader range of innovations the period has supplied — are considerable. The wealth and income concentrations the period has produced, the wage stagnation that has operated alongside the productivity gains, the political-economic distortions that the corporate-political relationship has generated, the financial instability that the 2008 crisis illustrated, the environmental costs that the period's industrial expansion has continued to accumulate — these are equally considerable. The case carries both registers forward.

One — The Shareholder-Value Transformation and the Takeover Wave of the 1980s

The institutional transformation of the American corporate economy across the 1980s proceeded through several operational mechanisms that the late 1970s had assembled and that the Reagan administration's regulatory orientation facilitated. The Reagan SEC, under the chairmanship of John Shad from 1981, conducted a regulatory-orientation shift toward what the period's terminology called "regulatory relief" — a reorientation of the SEC's enforcement priorities and rulemaking toward facilitating capital-markets operations rather than constraining them. The Reagan Department of Justice, under William French Smith and subsequently Edwin Meese, similarly reoriented the federal antitrust enforcement toward a considerably narrower interpretation of the Sherman Act that the Chicago-school antitrust analysis (principally articulated by Robert Bork in *The Antitrust Paradox*, published in 1978) supplied. The Reagan administration's broader economic orientation — supply-side tax reductions through the Economic Recovery Tax Act of 1981 and the Tax Reform Act of 1986, the deregulation of the trucking and airline industries (the Motor Carrier Act of 1980 and the Airline Deregulation Act of 1978 had been signed by Jimmy Carter, but the implementation proceeded across the Reagan period), the broader deregulatory orientation across the federal regulatory framework — supplied the political-economic environment within which the corporate transformation proceeded.

The most consequential operational change of the period was SEC Rule 10b-18, adopted in November 1982. The rule established a "safe harbor" under which corporations conducting open-market repurchases of their own shares would be protected from the market-manipulation

prohibitions that the Securities Exchange Act of 1934 had established. Before 1982, open-market share repurchases had been treated as potential market manipulation under the SEC's enforcement orientation, and corporations conducted them sparingly. After Rule 10b-18, share repurchases became operationally available as a routine corporate-finance technique. American corporate share repurchases rose from approximately $6.6 billion in 1980 to approximately $200 billion by 2000 and to over $1 trillion annually by the late 2010s. The repurchase technique allowed corporate management to return capital to shareholders without paying it out as dividends (which were taxed at higher rates), to support corporate share prices by reducing the share count outstanding, to increase earnings per share without increasing actual earnings, and to satisfy the compensation incentives that the period's executive-compensation arrangements had begun to install.

The executive compensation arrangements that the period institutionalized linked the compensation of corporate managers to the share-price performance of the corporations they operated. The mechanism principally operated through stock options — rights granted to executives to purchase corporate shares at a specified strike price across a specified period — that would become valuable if the share price rose above the strike price across the option's exercise period. The doctrinal foundation for the arrangement was the Jensen-Meckling agency-theoretic analysis that Part IV examined, which had argued that the agency costs imposed on shareholders by managers whose interests diverged from shareholder interests could be reduced through compensation arrangements that aligned managerial interests with shareholder interests. The operational consequence across the 1980s and 1990s was a sharp increase in executive compensation and a fundamental reorientation of executive incentives toward share-price performance. American CEO compensation, which had averaged

approximately twenty times average worker compensation across the postwar period, rose to approximately 200 times average worker compensation by 2000 and to approximately 350 times by the late 2010s. The increase was driven principally by the stock-option arrangements that the period institutionalized and that the share-repurchase technique progressively augmented.

The institutional vehicle that supplied the operational discipline for the shareholder-value transformation was the leveraged buyout and the related hostile-takeover technique. The leveraged buyout, pioneered by KKR (founded 1976 by Jerome Kohlberg, Henry Kravis, and George Roberts) and developed across the late 1970s by Forstmann Little and other early private-equity firms, operated by acquiring publicly traded corporations using a combination of equity capital from the acquiring firm and large debt financing that the acquired corporation would subsequently bear. The acquired corporation would typically be restructured following the acquisition — operations sold or shut down, employees terminated, capital structure altered to support the debt service, management replaced, the broader range of operational restructuring that the financial engineering required. The transformed corporation would either be operated more profitably under the new ownership and eventually returned to public trading at a higher valuation, or be broken apart and sold in pieces. The principal financial mechanism that supported the leveraged buyout was the junk-bond market that Michael Milken developed at Drexel Burnham Lambert across the late 1970s and 1980s, which allowed the leveraged-buyout firms to raise high-yield debt financing at scales the prior capital-markets infrastructure had not made possible.

The RJR Nabisco buyout of 1988 supplied the operational illustration of the leveraged-buyout movement at its peak. RJR Nabisco

had been formed in 1985 by the merger of R.J. Reynolds Tobacco and Nabisco Brands. By 1988 the company's chief executive officer was F. Ross Johnson, a Canadian-American executive who had moved up through the Nabisco organization. In October 1988 Johnson proposed a management buyout of the company at $75 per share, financed principally by Shearson Lehman Hutton. The proposal triggered an immediate competitive response from Kravis at KKR, whose firm had been operating in private-equity transactions for over a decade and who had been one of the executives Johnson had originally approached about the transaction. The bidding war that followed across October and November 1988 drew in several major financial institutions — Morgan Stanley, Goldman Sachs, Salomon Brothers, First Boston, Wasserstein Perella, and others — as the bidding price rose from Johnson's initial $75 per share to KKR's eventual $109 per share. The final transaction value was approximately $25 billion, the largest leveraged buyout that had been completed to that point and one that would remain the largest for the following seventeen years. Bryan Burrough and John Helyar's *Barbarians at the Gate: The Fall of RJR Nabisco*, published in 1989, supplied the journalistic-narrative documentation of the transaction and became the standard cultural reference for the leveraged-buyout movement of the 1980s.

The operational consequences of the RJR Nabisco buyout, and of the broader leveraged-buyout movement that the late 1980s had generated, were mixed. KKR's eventual investment return on RJR Nabisco was modest — the firm exited its position by 1995 at approximately the same price per share it had paid in 1988, and the broader investor returns from the transaction were limited. The institutional pattern that the transaction illustrated was, however, consequential. The American managerial class understood, after RJR Nabisco, that the corporation it operated was institutionally vulnerable

to acquisition by financial sponsors whose interests would not necessarily align with the operational continuity the prior managerial arrangement had maintained. The defensive response that emerged across the American corporate sector — the operational restructurings, the share-repurchase programs, the executive-compensation reforms, the broader range of operational changes that the period produced — was heavily conducted to align corporate operations with shareholder-return objectives sufficiently that the takeover pressure could be reduced. By approximately 1990 the leveraged-buyout movement of the 1980s had effectively transformed the American managerial corporation into the early form of what subsequent terminology would call the shareholder-value corporation.

The 1980s also produced the criminal prosecutions and the institutional collapses that the period's excesses generated. Ivan Boesky, the principal American arbitrageur of the 1980s, was charged with insider trading in November 1986 and pled guilty in 1987 to a $100 million fine and prison time. Boesky's cooperation with federal prosecutors supplied the evidence that led to the prosecution of Michael Milken at Drexel Burnham Lambert, who was charged with securities fraud and racketeering in March 1989, pled guilty in April 1990 to six felony counts, paid $600 million in fines, and served approximately two years in federal prison. Drexel Burnham Lambert itself filed for bankruptcy in February 1990, ending the firm's operations and the junk-bond market that Milken had built. The savings-and-loan crisis of the late 1980s — the collapse of several hundred savings institutions whose lending and investment operations had been deregulated by the Garn-St. Germain Depository Institutions Act of 1982 and had subsequently failed across the late 1980s — produced approximately $124 billion in federal-government losses through the Resolution Trust Corporation that conducted the workout. The institutional pattern that

emerged by the early 1990s was the shareholder-value corporation operating within a continuing capital-markets infrastructure that the deregulatory orientation of the 1980s had built and that subsequent decades would continue extending.

Two — Financial Deregulation and the Gramm-Leach-Bliley Repeal of Glass-Steagall

The financial deregulation that proceeded across the 1980s and 1990s gradually eroded the New Deal regulatory framework that Part IV examined. The erosion proceeded through several distinct legislative and administrative changes across the period. The Depository Institutions Deregulation and Monetary Control Act of 1980 had begun the process by phasing out the interest-rate ceilings that the Banking Act of 1933 had imposed and by extending the authority of the Federal Reserve System over additional categories of financial institution. The Garn-St. Germain Depository Institutions Act of 1982 had further deregulated the savings-and-loan industry (with the consequences the savings-and-loan crisis would shortly produce). The Federal Reserve's regulatory interpretations across the late 1980s and 1990s progressively expanded the scope of activities that bank holding companies could conduct under Section 20 of the Banking Act of 1933, which had been used to limit affiliations between commercial banks and securities firms. By the late 1990s the institutional separation that the Banking Act of 1933 had imposed between commercial banking and investment banking had been largely eroded through administrative interpretation, and several major financial institutions had been operating combined commercial-banking and securities operations through holding-company structures that the Federal Reserve had authorized.

The proximate cause of the legislative repeal was the Citicorp-Travelers merger of 1998. Citicorp, one of the principal American commercial banks, and Travelers Group, an insurance and investment-banking conglomerate that Sandy Weill had assembled across the 1980s and 1990s through a series of acquisitions, announced on April 6, 1998, that they would merge to form Citigroup. The combined entity — comprising commercial banking, investment banking, securities brokerage, insurance underwriting, and the broader range of financial-services operations that the predecessor companies had conducted — was, on its face, a combination that the Banking Act of 1933 and the Bank Holding Company Act of 1956 prohibited. The Federal Reserve, under the chairmanship of Alan Greenspan, granted the merging companies a two-year forbearance under the assumption that legislative repeal of the relevant prohibitions would be obtained across the forbearance period. Sandy Weill and John Reed (then chairman of Citicorp) conducted the political work that the legislative repeal required, principally through engagement with the Clinton administration's Treasury Department under Robert Rubin (who would shortly join Citigroup after leaving Treasury in July 1999) and Lawrence Summers, and through the bipartisan congressional support that the financial-services industry's contributions and political relationships had cultivated.

The Gramm-Leach-Bliley Act (the Financial Services Modernization Act of 1999), signed by Bill Clinton on November 12, 1999, completed the legislative repeal. The Act, named after its principal sponsors (Senator Phil Gramm of Texas, Representative James Leach of Iowa, and Representative Thomas Bliley of Virginia), repealed Sections 20 and 32 of the Banking Act of 1933 (the provisions that had separated commercial banking from securities affiliations) and amended the Bank Holding Company Act of 1956 to permit financial

holding companies to engage in the combined banking, securities, and insurance activities that the prior regulatory framework had prohibited. The Act passed the Senate by 90-8 and the House by 362-57 on November 4, 1999. The institutional consequence was that the largest American financial institutions could legally conduct the combined operations that Citigroup had already begun conducting under the Federal Reserve's forbearance, and the broader American financial-services industry could consolidate into the financial conglomerates that the subsequent decade would produce.

The institutional consequences of the Glass-Steagall repeal across the following decade were considerable. The consolidation of the American financial-services industry into a smaller number of larger institutions proceeded across the early 2000s through additional mergers — JPMorgan Chase formed in 2000 through the merger of J.P. Morgan with Chase Manhattan, Bank of America acquired Fleet Financial in 2004 and MBNA in 2005, Wachovia acquired First Union in 2001 and Golden West Financial in 2006, the broader range of consolidations that the period produced. The combined financial institutions developed operational capacities that the prior regulatory separation had limited — particularly in the structured-finance and derivatives markets that the period was building. The institutional concentration produced by 2007 a financial-services industry in which six institutions (Bank of America, Citigroup, JPMorgan Chase, Wells Fargo, Goldman Sachs, and Morgan Stanley) held assets approaching sixty percent of American GDP. The Commodity Futures Modernization Act of 2000, signed by Bill Clinton on December 21, 2000, exempted over-the-counter derivatives from the regulatory authority of the Commodity Futures Trading Commission and the Securities and Exchange Commission, supplying the regulatory environment within which the credit-default-swap and

collateralized-debt-obligation markets would develop across the following several years.

The institutional pattern that emerged by approximately 2005 was a financial-services industry of unprecedented operational scale, conducting unprecedented volumes of structured-finance and derivatives operations under a regulatory framework that the deregulatory legislation and the administrative interpretations had progressively reduced. The mortgage-finance operations that the period built — the subprime mortgage origination that proceeded across approximately 2003 through 2007, the securitization of those mortgages into mortgage-backed securities, the resecuritization of those mortgage-backed securities into collateralized debt obligations, the credit-default swaps that supplied insurance against those collateralized debt obligations, the broader range of structured-finance instruments that the period generated — operated at scales the prior American capital markets had not previously approached. The institutional accomplishments of the period — the housing-finance availability that supplied mortgages to a previously underserved American homeownership population, the financial innovations that allowed risk to be distributed across global financial markets, the broader range of capital-markets developments the period produced — sat alongside the institutional pathologies that the 2008 financial crisis would shortly expose. Both registers belong to the historical record.

Three — Financialization, Private Equity, and the Institutional Investor Concentration

The institutional pattern that the American corporate economy operated under across the 1990s and 2000s was what subsequent commentary has called the financialization of the corporate economy. The pattern operated across multiple dimensions. The corporate-financial operations of the major American non-financial corporations grew across the period to constitute large portions of their overall activity — General Electric's financial-services arm (GE Capital, organized in 1932 originally to supply consumer financing for appliances, expanded across the late twentieth century into a broad financial-services operation) accounted for approximately fifty percent of GE's earnings by 2000. Ford Motor Credit Company and General Motors Acceptance Corporation (GMAC) similarly operated sizable financial-services businesses alongside their nominal automotive operations. The pattern reflected the broader operational reality that financial activities were generating returns that exceeded the returns available from the underlying industrial operations, and that the American corporate sector was progressively reorganizing its operations toward financial-services and financial-engineering activities.

The institutional investor concentration that emerged across the period transformed the corporate-governance environment within which American corporations operated. The pension-fund and mutual-fund sectors that had been growing across the postwar period accelerated their growth across the 1980s and 1990s through several institutional developments. The Employee Retirement Income Security Act of 1974 (ERISA) had established the federal regulatory framework for private pension funds and had encouraged the growth of the defined-benefit pension system across the 1970s. The shift across the 1980s and 1990s

from defined-benefit pension plans (in which the employer bore the investment risk and the retirement benefit was specified in advance) to defined-contribution pension plans (in which the employee bore the investment risk and the retirement benefit depended on the investment performance, principally through 401(k) plans whose growth followed Internal Revenue Code Section 401(k) which had been added in 1978) shifted approximately three trillion dollars of retirement assets into mutual-fund vehicles across the period. The mutual-fund industry that emerged grew from approximately $134 billion in assets under management in 1980 to approximately $7 trillion by 2000 and to approximately $30 trillion by 2025.

The institutional pattern that emerged within the mutual-fund industry across the period was the progressive dominance of index funds — mutual funds that operated on a passive-investment strategy of holding the constituents of a specified market index (such as the S&P 500) in proportion to their market capitalizations. The doctrinal foundation for the index-fund approach had been articulated by Burton Malkiel in *A Random Walk Down Wall Street* (1973) and by the broader academic-finance literature that had developed across the 1960s and 1970s. The operational vehicle was supplied by John Bogle's Vanguard Group, which had introduced the first publicly available index mutual fund (the Vanguard 500 Index Fund) in 1976. Across the following four decades the index-fund approach progressively dominated the mutual-fund industry. By 2025 the three largest American index-fund asset managers (BlackRock, Vanguard, and State Street Global Advisors) collectively managed approximately $25 trillion in assets, of which a large portion was held in index funds and exchange-traded funds that tracked the principal American equity indexes.

The corporate-governance consequence of the index-fund concentration was the emergence of what subsequent commentary has called the Big Three corporate-governance position. The three major index-fund asset managers, holding the equities of the major American publicly traded corporations as passive index investments, became collectively the largest shareholders of essentially every major American publicly traded corporation by the mid-2010s. BlackRock, Vanguard, and State Street collectively held approximately twenty percent of the average S&P 500 corporation's outstanding shares by 2020. The Big Three's institutional position was, on its face, paradoxical — they were the largest shareholders of the corporations they held, but they were also passive index investors whose investment strategies precluded any active engagement with the corporations' operational decisions. The institutional position that the Big Three actually occupied was that they retained voting authority over the shares they held under their fiduciary obligations to the underlying investors, and that voting authority was exercised on the governance proposals that came before the shareholder votes at the corporations' annual meetings. The Big Three's voting practices accordingly became, by the late 2010s, a principal determinant of corporate-governance outcomes across the American publicly traded corporate sector.

Private equity emerged across the same period as a major institutional category of American corporate ownership. The leveraged-buyout firms of the 1980s that had operated principally through individual transactions — KKR, Forstmann Little, Bain Capital (founded 1984 by Mitt Romney and other Bain & Company partners), Clayton Dubilier & Rice (founded 1978), and others — reorganized across the 1990s and 2000s into private-equity firms that operated through multi-billion-dollar investment funds raised from institutional investors (principally pension funds, sovereign wealth funds, and

university endowments). The private-equity firms acquired publicly traded corporations and took them private, conducted operational and financial restructurings across approximately five-year holding periods, and exited their investments through either resale to other private-equity firms or eventual re-listing on the public exchanges. By 2020 the American private-equity industry held approximately five trillion dollars in assets under management, employed approximately twelve million American workers across its portfolio companies, and conducted operations across essentially every sector of the American economy. The Blackstone Group (founded 1985 by Stephen Schwarzman and Peter Peterson), the Carlyle Group (founded 1987), Apollo Global Management (founded 1990 by Leon Black), and the broader range of major private-equity firms that emerged across the period operated as the institutional successors to the leveraged-buyout firms of the 1980s.

The institutional pattern that emerged by approximately 2005 was an American corporate sector in which the largest publicly traded corporations were owned principally by passive index funds whose voting authority was concentrated in three major asset managers, in which the corporate sector that was not publicly traded was owned principally by private-equity firms whose investment strategies emphasized financial restructuring and operational reorganization across short-to-medium-term holding periods, and in which the executive compensation arrangements that the shareholder-value transformation had installed continued operating to align corporate management with shareholder-return objectives. The pattern represented a sharp departure from the dispersed-shareholder managerial-discretion arrangement that Berle and Means had described in 1932 and that the postwar managerial corporation had operated under. The corporate-governance arrangement that emerged was, in

operational substance, a concentrated-shareholder arrangement in which the concentration was held by financial intermediaries (the index-fund asset managers, the private-equity firms, the broader range of institutional-investor categories that had emerged across the period) whose interests in the underlying corporations were principally financial rather than operational.

Four — The 2008 Financial Crisis and the Regulatory Response

The 2008 financial crisis was the operational illustration of the institutional pattern that the preceding three sections have examined. The crisis emerged across approximately 2007 from the subprime-mortgage and structured-finance operations that the period had built, and across approximately 2008 produced the most severe financial-system contraction in American history since the Great Depression of the 1930s. The institutional response that emerged — federal emergency interventions across approximately September 2008 through approximately March 2009, the regulatory legislation that the Dodd-Frank Act of 2010 supplied, the broader range of institutional adjustments that the period produced — both contained the immediate crisis and supplied the foundation on which the subsequent corporate-financial economy has continued operating.

The proximate trigger of the crisis was the deterioration of the subprime-mortgage market across 2006 and 2007. American housing prices had been rising at unprecedented rates across the period from approximately 2002 through 2006, and the mortgage-origination operations of the period had progressively expanded the population of borrowers to whom mortgages were issued. By 2006 approximately twenty percent of American mortgage originations were subprime

(issued to borrowers whose credit history and income did not meet the standards that prime mortgage lending required). The subprime mortgages were securitized into mortgage-backed securities by the major American investment banks and mortgage originators, and the mortgage-backed securities were further securitized into collateralized debt obligations whose tranches were rated by the major credit-rating agencies (Standard & Poor's, Moody's, and Fitch) at ratings that progressively diverged from the actual credit quality of the underlying mortgages. The credit-default-swap market that had developed across the same period allowed financial institutions to insure against the credit risk of the collateralized debt obligations, and accumulated large counterparty exposures across the principal financial institutions.

The deterioration accelerated across 2007 as the American housing market entered its decline and as the subprime mortgages defaulted at rates sharply exceeding the rates the credit-rating agencies had anticipated. The collateralized debt obligations lost value, the credit-default-swap obligations that had insured them came due, and the financial institutions that had accumulated exposure to the structured-finance instruments encountered progressively severe operational difficulties. The failures of New Century Financial in April 2007, American Home Mortgage in August 2007, and Countrywide Financial in January 2008 (acquired in distress by Bank of America) supplied the early signals of the broader institutional difficulty.

Bear Stearns, the smallest of the major American investment banks, failed in March 2008 when its short-term funding sources withdrew and the firm encountered an operational liquidity crisis. The Federal Reserve and the Treasury Department arranged the acquisition of Bear Stearns by JPMorgan Chase on March 16, 2008, at a price of $2 per share (subsequently negotiated to $10 per share) and with a $30 billion

Federal Reserve guarantee of specified Bear Stearns assets. The arrangement avoided a Bear Stearns bankruptcy but established the institutional pattern that federal authorities would intervene to prevent the failure of major financial institutions whose collapse would threaten the broader financial system.

Fannie Mae and Freddie Mac, the two government-sponsored mortgage-finance corporations, were placed into federal conservatorship on September 7, 2008, when their accumulated losses on subprime-mortgage exposures had compromised their operational solvency. The conservatorship arrangement supplied federal authority over the operations of the two corporations and transferred the operational risks of their continuing operations to the federal government.

The institutional moment that came to be called the financial crisis arrived across the week of September 14, 2008. Lehman Brothers, the fourth-largest American investment bank, filed for bankruptcy on September 15, 2008, after negotiations across the prior weekend with the Federal Reserve, the Treasury Department, and several potential acquirers had failed to produce a transaction. The Lehman bankruptcy was the largest bankruptcy filing in American history (the bankruptcy petition listed approximately $600 billion in assets and $613 billion in liabilities) and produced an immediate operational crisis across the American financial system. American International Group, the largest American insurance company and the principal counterparty for the credit-default-swap market, encountered immediate operational difficulties as the bankruptcy triggered margin calls and collateral demands across its CDS positions. The Federal Reserve announced on September 16, 2008, that it would extend an $85 billion loan facility to AIG in exchange for a 79.9 percent equity stake in the company,

supplying the federal intervention that prevented AIG's immediate collapse and the broader cascade of counterparty failures that the AIG collapse would have produced.

Goldman Sachs and Morgan Stanley, the two remaining major American investment banks, converted to bank holding companies on September 21, 2008, becoming eligible for Federal Reserve discount-window lending and the broader range of federal-government support that commercial banks could access. Washington Mutual, the largest American savings-and-loan institution, was seized by federal regulators on September 25, 2008, and its banking operations were sold to JPMorgan Chase. Wachovia, the fourth-largest American commercial bank, was acquired by Wells Fargo on October 3, 2008, after an initial acquisition agreement with Citigroup had been superseded.

The Emergency Economic Stabilization Act of 2008, signed by George W. Bush on October 3, 2008, established the Troubled Asset Relief Program (TARP) with $700 billion in federal authority to purchase distressed assets from financial institutions or to inject capital into them through preferred-stock investments. Treasury Secretary Henry Paulson initially proposed using the TARP funds to purchase mortgage-related assets but shifted across October 2008 to a capital-injection approach under which the Treasury would purchase preferred stock in major American financial institutions and supply the capital that the institutions required to continue operating. The first capital injections — $125 billion across the nine largest American financial institutions on October 14, 2008 — were conducted on terms that the institutions accepted under federal pressure rather than necessarily on terms they had freely negotiated. The TARP capital injections continued across the following several months and eventually

deployed approximately $400 billion of the authorized $700 billion across the financial-services, automotive, and broader corporate sectors.

The Federal Reserve's interventions across the same period supplied the larger portion of the federal support that the financial system received. The Federal Reserve's emergency lending facilities — the Term Auction Facility, the Primary Dealer Credit Facility, the Term Securities Lending Facility, the Commercial Paper Funding Facility, the Money Market Investor Funding Facility, and the broader range of facilities the Federal Reserve developed across approximately 2008 and 2009 — extended approximately $7 trillion in federal credit support across the period (most of which was repaid as the affected institutions returned to operational stability across approximately 2009 and 2010). The Federal Reserve's quantitative-easing programs, conducted across approximately 2008 through approximately 2014, expanded the Federal Reserve's balance sheet from approximately $900 billion in mid-2008 to approximately $4.5 trillion by 2014, supplying the monetary support that the broader American economy required to recover from the crisis.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed by Barack Obama on July 21, 2010, supplied the principal legislative response. The Act established the Financial Stability Oversight Council to monitor systemic risk, created the Consumer Financial Protection Bureau to regulate consumer-financial products, established the Office of Financial Research to supply data and analysis on financial-system conditions, imposed new regulatory authorities on derivatives markets through Title VII, established the "Volcker Rule" prohibiting commercial banks from conducting proprietary trading and from sponsoring hedge funds or private-equity funds (Section 619), established the orderly-liquidation authority for systemically important financial institutions in distress (Title II), and required the largest

financial institutions to prepare "living wills" demonstrating how they could be resolved in bankruptcy without triggering systemic consequences (Title I). The Act's operational implementation proceeded across the following decade through extensive rulemakings by the various federal agencies, and produced the regulatory framework that the post-crisis American financial system has operated under.

The institutional consequences of the 2008 crisis and the regulatory response that followed it were considerable. The American economy lost approximately 8.7 million jobs across the recession that the crisis produced (the official recession dated from December 2007 through June 2009), with unemployment rising from approximately five percent in late 2007 to a peak of approximately ten percent in October 2009. American household wealth fell by approximately seventeen percent across the recession — over five times the proportional decline of 1929. Approximately nine million American homeowners lost their homes to foreclosure across the period from 2008 to 2012. The institutional pattern that emerged was a federal regulatory framework that constrained financial-institution operations across additional dimensions than the prior framework, accompanied by a financial-services industry whose institutional concentration had increased across the crisis (the assisted mergers of Bear Stearns into JPMorgan Chase, of Merrill Lynch into Bank of America, of Washington Mutual into JPMorgan Chase, of Wachovia into Wells Fargo, and the broader range of crisis-period consolidations had produced a more concentrated financial-services industry than had existed before the crisis). The institutional accomplishment of avoiding the financial-system collapse that the September 2008 events had threatened, the institutional pathology of producing a more concentrated and more politically influential financial-services industry across the response — both registered.

Five — *Citizens United* and the Corporate-Political Relationship

The doctrinal extension that the *Citizens United v. Federal Election Commission* decision supplied in January 2010 was the most consequential constitutional-law development affecting the American corporation across the contemporary period. The case arose from a 2008 dispute in which Citizens United, a conservative nonprofit corporation, sought to distribute a documentary film critical of Hillary Clinton during the 2008 presidential primary season. The Bipartisan Campaign Reform Act of 2002 (the McCain-Feingold Act) had prohibited corporations and labor unions from using their general treasury funds to make "electioneering communications" — broadcast, cable, or satellite communications referring to clearly identified candidates for federal office within 60 days before a general election or 30 days before a primary. Citizens United argued that the prohibition was unconstitutional as applied to its proposed distribution of the documentary, and the case worked its way through the federal courts to the Supreme Court. The Court heard initial oral argument on March 24, 2009, and (after deciding to reconsider the broader constitutional question rather than resolving the case on narrower grounds) heard reargument on September 9, 2009. The decision was issued on January 21, 2010.

The Court ruled 5-4 in favor of Citizens United, with Justice Anthony Kennedy writing the majority opinion. The decision overruled the Court's earlier decisions in *Austin v. Michigan Chamber of Commerce* (1990), which had upheld a Michigan prohibition on corporate independent expenditures in elections, and the portion of *McConnell v. FEC* (2003) that had upheld the BCRA's

electioneering-communication prohibition. The Court's principal doctrinal move was to treat the corporate-personhood doctrine that the *Santa Clara* headnote pathway had established as extending to First Amendment political-speech protections. The First Amendment, Kennedy wrote, "prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." The Court rejected the "antidistortion" rationale that had supported the prior decisions — the argument that corporate political expenditures, conducted with treasury funds whose accumulation reflected the operational advantages of the corporate form rather than political support from the corporation's members, could be regulated to prevent the "corrosive and distorting effects of immense aggregations of wealth" — and held that "[a]ll speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech."

The doctrinal extension that *Citizens United* supplied was the direct application to political speech of the constitutional-personhood doctrine that the *Santa Clara* headnote had originally established in 1886. The pathway across the intervening 124 years had proceeded through *Pembina Consolidated Silver Mining Co. v. Pennsylvania* (1888) and the subsequent late-nineteenth-century cases that built the Fourteenth Amendment corporate-personhood doctrine, through the Lochner-era cases that had used the Fourteenth Amendment to constrain state regulatory action against corporations, through *First National Bank of Boston v. Bellotti* (1978) in which Justice Lewis Powell (himself the author of the 1971 "Powell Memorandum" that had supplied the institutional template for the conservative legal-movement infrastructure that would shortly emerge) had extended First Amendment protections to corporate political speech in ballot-measure campaigns, through *Buckley v. Valeo* (1976) which had established that

political-campaign spending was First Amendment speech, and through the broader doctrinal accumulation that the late-twentieth-century constitutional development had produced. *Citizens United* completed the pathway by holding that corporations could not be subject to spending limits on independent political expenditures in candidate elections.

The institutional consequences of *Citizens United* and the subsequent extensions (*Speechnow.org v. FEC* in the D.C. Circuit in 2010, which authorized the creation of "Super PACs" through the application of *Citizens United* reasoning to political-action-committee fundraising; *McCutcheon v. FEC* in 2014, which struck down aggregate contribution limits on individual political donations; the broader range of campaign-finance cases that the Court decided across the 2010s) transformed the operational environment of American electoral politics. The "Super PACs" — political-action committees that could accept unlimited contributions from individuals, corporations, and labor unions for the purpose of making independent political expenditures — emerged across the 2010 election cycle and rapidly became the dominant institutional vehicle for political-campaign spending outside the official candidate campaigns. The "dark money" organizations operating under Section 501(c)(4) of the Internal Revenue Code (social-welfare organizations that were not required to disclose their donors) became the principal institutional vehicle for political spending that did not appear in any public reporting. By the 2024 election cycle American political-campaign spending had reached approximately $16 billion across the various federal and state campaigns, of which a sizable majority was conducted through institutional vehicles that the post-*Citizens United* doctrinal framework had made available.

The institutional pattern that emerged was a corporate-political relationship in which the operational influence of corporate interests on the American political process was conducted principally through the Super PACs, the dark-money organizations, the trade associations (the U.S. Chamber of Commerce, the Business Roundtable, the various industry-specific trade groups that operated across the political process), the corporate-sponsored think tanks (the Heritage Foundation, the American Enterprise Institute, the Cato Institute, the Hoover Institution, the broader network of conservative and libertarian institutional-research organizations that the post-1970s conservative legal movement had built), and the broader range of institutional channels through which corporate political interests engaged with the political process. The institutional pattern represented a sharp expansion of the corporate-political relationship that had operated across the preceding decades, and produced a contemporary political environment in which the operational influence of corporate interests on political outcomes was, by most contemporary analyses, considerably greater than it had been across the postwar period that Part IV examined.

Six — The Contemporary Form: Platform Concentration and the Present Moment

The American corporate form that operates in 2026 has continued the institutional pattern that the preceding sections have tracked, with several additional developments specific to the present period worth registering. The technology-platform corporations that emerged across the 1990s and 2000s — principally Apple (founded 1976), Microsoft (founded 1975), Amazon (founded 1994), Alphabet/Google (founded 1998), Meta/Facebook (founded 2004), and the broader range of major American technology corporations — operate at scales that exceed the operational scales of the integrated industrial corporations of the postwar period. By 2026 the combined market capitalization of the seven largest American technology corporations — Apple, Microsoft, Alphabet, Amazon, Meta, Nvidia, and Tesla, sometimes called the "Magnificent Seven" in contemporary financial terminology — exceeds twenty trillion dollars, which is greater than the combined GDP of every national economy outside the United States and China. The corporations' operational scales — Apple's approximately 165,000 employees and approximately $400 billion in annual revenues, Amazon's approximately 1.5 million employees and approximately $640 billion in annual revenues, Alphabet's approximately 180,000 employees and approximately $350 billion in annual revenues, and the broader range of operational scales the other corporations operate at — sharply exceed the operational scales of the integrated industrial corporations that organized the American economy across the prior eight decades.

The institutional pattern that the platform corporations operate under reflects several features that distinguish them from the prior industrial corporations. First, the network-economy structure that the platform

corporations operate within tends to produce concentrations of operational position that exceed the concentrations that the prior industrial-era markets produced — the network effects, the data accumulations, and the operational integrations that the platform business models depend on tend toward winner-takes-most market structures that the prior industrial-era markets did not reliably produce. Apple and Google between them supply approximately 99 percent of American smartphone operating-system installations. Amazon supplies approximately forty percent of American e-commerce. Alphabet supplies approximately ninety percent of American online search. The market concentrations that the platform economy has produced exceed the trust-era concentrations that the late nineteenth century produced and that the Sherman Act and the subsequent antitrust framework were designed to address.

Second, the corporate-governance arrangements at the platform corporations reflect a return — in operational substance — to the founder-controlled corporate structure that the late nineteenth and early twentieth centuries had operated under and that the Berle-Means dispersed-shareholder pattern had been treated as historically superseding. Many of the major platform corporations operate under dual-class share structures that concentrate voting control in the founders or in narrowly held founder-affiliated entities. Alphabet's dual-class structure concentrates voting control in Larry Page, Sergey Brin, and Eric Schmidt; Meta's dual-class structure concentrates voting control in Mark Zuckerberg; the Snap Inc. structure issued only non-voting shares in its 2017 initial public offering. The institutional pattern represents the return of concentrated-shareholder corporate governance through institutional vehicles that the postwar dispersed-shareholder arrangement had been treated as having displaced.

Third, the regulatory framework that the platform corporations operate within has been considerably weaker than the regulatory framework that the prior industrial-era corporations operated within. The antitrust enforcement against the platform corporations has been limited across the period since approximately 2000 — *United States v. Microsoft Corp.* (2001) produced a consent decree rather than the dissolution that the trial-court Findings of Fact and Conclusions of Law had originally contemplated; the federal antitrust actions against Google (filed October 20, 2020), Meta (filed December 9, 2020), Amazon (filed September 26, 2023), and Apple (filed March 21, 2024) have continued working through the federal courts across the 2020s without producing the dissolution remedies that the trust-era antitrust enforcement had produced. The Section 230 of the Communications Decency Act of 1996 has supplied platform corporations with broad liability protections that the prior media-and-publishing institutional framework had not extended to comparable institutions. The data-privacy regulatory framework, the algorithmic-content-moderation framework, the labor-relations framework as it applies to platform corporations and their contractors, and the broader range of regulatory categories that the platform-economy operational pattern raises have largely not been developed at the federal level (some development has proceeded at the state level, principally in California, and at the international level, principally in the European Union through the General Data Protection Regulation of 2018 and the Digital Markets Act and Digital Services Act of 2022).

The institutional concentration that operates across the contemporary American corporate sector extends beyond the platform corporations. The Big Three asset managers (BlackRock with approximately $11.5 trillion in assets under management as of 2025, Vanguard with approximately $10 trillion, and State Street with

approximately $4.5 trillion) collectively hold approximately twenty percent of the average S&P 500 corporation's outstanding shares and exercise the voting authority that comes with that holding. The major private-equity firms (Blackstone with approximately $1.1 trillion in assets, Apollo with approximately $700 billion, KKR with approximately $600 billion, and the broader range of major private-equity firms) collectively employ approximately twelve million American workers across their portfolio companies and operate across essentially every American economic sector. The major commercial banks (JPMorgan Chase with approximately $4 trillion in assets, Bank of America with approximately $3.3 trillion, Citigroup with approximately $2.4 trillion, Wells Fargo with approximately $1.9 trillion) operate at concentrations that exceed the concentrations that the pre-2008 financial-services industry operated under, the post-crisis consolidations having produced more concentrated rather than less concentrated outcomes.

The compensation patterns that the period operates under reflect the institutional patterns the preceding decades have built. American chief-executive-officer compensation has continued rising across the period — the average S&P 500 CEO compensation reached approximately $17 million in 2024, approximately 290 times average worker compensation. The American wage and income distributions have continued widening across the period — the top one percent of American households held approximately 30 percent of American wealth in 2024, up from approximately 25 percent in 2000 and approximately 20 percent in 1980. The American median household income, adjusted for inflation, has grown across the period from 1980 to 2024 by approximately fifteen percent, while American GDP per capita has approximately doubled across the same period — the productivity gains that the contemporary economy has generated have flowed

disproportionately to the upper portions of the income distribution. The labor-force participation rates, the homeownership rates, the institutional indicators of broader American economic position that the postwar managerial corporation had supplied — these have remained largely flat or declined across the contemporary period, while the corporate-financial indicators (the S&P 500 index, corporate-profit margins, financial-asset valuations) have sharply appreciated.

The institutional accomplishments of the contemporary corporate form are considerable. The technological innovations that the platform corporations and the broader American corporate sector have produced — the smartphone, the broadband internet infrastructure, the cloud-computing services, the machine-learning and artificial-intelligence systems that emerged across the 2010s and 2020s, the biotechnology and pharmaceutical innovations including the mRNA vaccine platforms that supplied the COVID-19 vaccines, the broader range of innovations the period has supplied — operate at scales and reach population numbers that prior institutional periods did not approach. The consumer welfare that the contemporary American corporate sector has produced in many categories — communications technology, retail availability, entertainment options, the broader range of consumer-product and consumer-service categories that the period has expanded — extends across the American and global populations at scales the prior periods did not achieve.

The institutional pathologies are equally extensive. The wage and income concentrations that the period has produced operate at levels that earlier American institutional periods had treated as politically untenable. The environmental costs that the contemporary corporate sector has continued accumulating — particularly the carbon-emissions consequences of the energy-intensive contemporary economy, but also

the broader environmental costs that the contemporary industrial and platform-corporation operations generate — have produced a climate trajectory whose long-term consequences the present period is only beginning to register. The labor-market consequences of the platform-economy operational pattern — the gig-economy classifications that have removed sizable portions of the American workforce from the labor-protection framework that the New Deal regulatory architecture had constructed, the algorithmic-management systems that have transformed the operational conditions of American work across many sectors, the broader range of labor-market patterns that the contemporary economy has produced — have undermined the institutional position of American labor below the position it had held across the postwar period. The political-economic distortions that the post-*Citizens United* campaign-finance framework has produced, the regulatory-capture patterns that have operated across many federal regulatory agencies, the broader range of corporate-political distortions that the contemporary period has accumulated — these have produced an American political environment in which the operational influence of corporate interests on political outcomes is, by most contemporary analyses, considerably greater than it has been across the preceding institutional periods.

The financial-instability potential that the contemporary corporate-financial economy operates with remains an open institutional question. The 2008 financial crisis was contained through extraordinary federal interventions, but the institutional patterns that produced the crisis — the financialization of the corporate economy, the concentration of the financial-services industry, the development of complex financial instruments whose risk characteristics exceed the operational capacity of the regulatory framework to monitor — have continued operating across the post-crisis period. The 2020 COVID-19

economic shock and the federal interventions that contained it (the CARES Act of March 2020 supplied approximately $2.2 trillion in federal support, the Federal Reserve's emergency-lending programs extended additional trillions, the broader range of federal interventions across the period from approximately March 2020 through approximately 2022 supplied approximately $5 trillion in combined federal support) operated within the institutional framework that the 2008 response had constructed but at scales that exceeded the 2008 interventions. The institutional question of whether the contemporary corporate-financial economy can be operated without recurring crises that require federal intervention remains, in 2026, an open question that the historical record of the period from 1980 to the present does not unambiguously resolve.

Closing: The Form Across Eight Centuries

The institutional history this case has tracked began in approximately 1245 with Pope Innocent IV's articulation of the persona ficta doctrine in his *Apparatus in quinque libros decretalium*. The doctrinal innovation that the *Apparatus* supplied was the recognition that a collective entity — a chapter, a monastery, a university, a guild — could operate as a unitary legal subject under medieval canon law, possessing institutional rights and obligations that did not reduce to the rights and obligations of the individual persons who constituted the collective. The doctrinal residue that the *Apparatus* deposited supplied the foundation on which Edward Coke and the English common-law courts built the corporate-personality doctrine that *The Case of Sutton's Hospital* (1612) consolidated. The doctrinal residue that *Sutton's Hospital* supplied was inherited by the American constitutional framers, deployed by John Marshall in *Trustees of Dartmouth College v. Woodward* (1819) to protect chartered corporations from state legislative interference, and progressively elaborated across the nineteenth century through the New Jersey enabling legislation of 1888 and 1889 that produced the holding company, through J.C. Bancroft Davis's headnote to *Santa Clara County v. Southern Pacific Railroad* in 1886 that established corporate personhood under the Fourteenth Amendment, and through the broader range of late-nineteenth-century institutional developments that the trust era and the Roosevelt-era response together produced. The New Deal regulatory framework that the 1930s installed, the postwar managerial corporation that the labor-corporate accord of the Treaty of Detroit (1950) institutionalized, the shareholder-value transformation that the doctrinal articulation of Milton Friedman (1970) and the operational vehicles of the leveraged-buyout movement of the 1980s produced, the financialization of the corporate economy that the 1990s and 2000s built, the *Citizens*

United extension of corporate political speech in 2010, and the platform-economy concentration that the contemporary period operates under — these institutional developments have continued operating within the foundation that the period from approximately 1245 to approximately 1914 had built.

What the eight hundred years from Innocent IV to 2026 have produced is an institutional form whose operational characteristics — institutional continuity across the lifetimes of the individuals who operate it, capacity to accumulate capital at scales no individual could accumulate, limited liability for the individuals whose capital is committed to its operations, legal personality enforceable in courts, ownership separable from operational management — supply the operational machinery on which essentially every aspect of contemporary economic and social life depends. The chartered hospital that Thomas Sutton endowed in London in 1611 supplied institutional care to its inhabitants across the four centuries since. The Bank of England that William Paterson chartered in 1694 supplied the central-banking institutional foundation that the modern global financial system has continued building upon. The East India Company that the Earl of Cumberland and his 218 associates chartered on December 31, 1600 supplied the operational template that the modern multinational corporation has continued operating under. The Massachusetts Bay Company that the Cambridge Agreement of August 26, 1629 transferred to North America supplied the institutional foundation that became one of the original American colonies. The institutional accomplishments of the corporate form across the eight centuries from Innocent IV to the present are extensive enough that no historical narrative that omits them can describe the world the present period inherits.

The institutional pathologies that the corporate form has accumulated across the same period are equally extensive. The colonial-era extractive operations that the East India Company conducted in Bengal across the late eighteenth century produced a famine in 1769-1773 that killed an estimated ten million people. The Banda massacre that Jan Pieterszoon Coen conducted on behalf of the Dutch East India Company in 1621 killed approximately ninety percent of the Banda Islands' indigenous population. The American railroad corporations of the post-Civil War decades operated under the close institutional integration with federal political authority that the Credit Mobilier scandal of 1872 illustrated. The trust-era industrial corporations of the late nineteenth century operated under market concentrations that the progressive critics of the period found incompatible with the political assumptions of a republican society. The postwar labor-corporate accord operated principally for the unionized industrial workforce and excluded sizable portions of the American workforce that the racial and geographical structures of the period had situated outside the unionized industrial corporations. The shareholder-value transformation of the 1980s and the financialization of the corporate economy that followed it produced wage and income concentrations that exceed the concentrations that the preceding American institutional periods operated under. The 2008 financial crisis was the operational illustration of the institutional pathologies that the financialization of the corporate-financial economy had accumulated. The contemporary platform-economy concentration operates at market positions that exceed the market positions that the prior antitrust framework had been designed to address. The reader who has read this far can register the accomplishments and the pathologies together, because both belong to the institutional history that the corporate form has produced across the eight centuries from Innocent IV's *Apparatus* to

the present.

The form continues operating. The eight hundred years of institutional development that the present case has tracked have not produced a stable end state. The institutional patterns that the corporate form operates under in 2026 will continue accumulating across the future periods that historians not yet born will eventually narrate. What this case has supplied is an institutional history of how the corporate form, across approximately eight hundred years of doctrinal and operational development, came to be the institutional shape that the present period operates under. The institutional residue continues accumulating. The next chapter is, as always, being written by the apex actors whose situations and solutions will produce the institutional patterns that the next period will inherit.

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